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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 339

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

NEWS SYNDICATE COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 18, 1960

CERTIORARI GRANTED NOVEMBER 7, 1960

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Chronological List of Relevant Docket Entries.

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NEWS SYNDICATE COMPANY, INC. and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.

———

Case Nos. 2-CA-4967
2-CB-1769
2-CB-1807

———o———

6.25.56	Charge filed in Case No. 2-CA-4967.
6.25.56	Charge filed in Case No. 2-CB-1769.
9.10.56	Order consolidating Case Nos. 2-CA-4967 and 2-CB-1769, issued.
9.10.56	Complaint in Case Nos. 2-CA-4967 and 2-CB-1769, issued.
9.17.56	Charge filed in Case No. 2-CB-1807.
9.18.56	Answer of New York Mailers' Union No. 6, sworn to.
9.21.56	Answer of News Syndicate Company, sworn to.
9.26.56	Order rescheduling hearing, dated.
11. 2.56	Telegram postponing hearing indefinitely, dated.
7.22.57	Complaint in Case No. 2-CB-1807, issued.
7.22.57	Notice of hearing in Case No. 2-CB-1807, issued.
7.29.57	Order consolidating cases and notice of hearing, dated.
7.29.57	Amended complaint in Case Nos. 2-CA-4967 and 2-CB-1769, dated.
7.30.57	Int'l. Typographical Union's motion to intervene in Case No. 2-CB-1807, dated.

Chronological List of Relevant Docket Entries.

7.31.57	Amended order consolidating cases and notice of hearing, dated.
8. 1.57	Answer of New York Mailers' Union No. 6, received.
8. 7.57	Regional Director's order granting extension of time to file answer to amended complaint, issued.
8. 7.57	Answer of New York Mailers' Union No. 6, sworn to.
8.15.57	Trial Examiner's order on motion to intervene, dated.
9. 9.57	Int'l. Typographical Union's motion to intervene, dated.
9. 9.57	Answer of New Syndicate to amended complaint, sworn to.
9.10.57	Order rescheduling hearing, dated.
9.19.57	Order rescheduling hearing dated.
10. 4.57	Order rescheduling hearing, dated.
11.12.57	Hearing opened.
11.21.57	Hearing closed.
4.15.58	Trial Examiner Libbin's Intermediate Report and Recommended Order, issued.
6.25.58	General Counsel's exceptions received.
6.27.58	New York Mailers' Union No. 6 and Int'l Typographical Union's exceptions, received.
6.27.58	Letter from New York Mailers' and Int'l. Typographical Union correcting joint exceptions.
7.14.58	Letter from New York Mailers' and Int'l. Typographical Union requesting permission to argue orally before the Board, dated.
9.25.58	Notice of oral argument, dated.
10.21.58	Oral argument appearance sheet, dated.
1. 2.59	Decision and order issued.

Chronological List of Relevant Docket Entries.

1. 9.59	Letter from News Syndicate requesting permission to file petition or motion for rehearing.
1.12.59	Letter from Mailers' Union No. 6 joining in request for permission to file petition or motion for rehearing, dated.
1.13.59	Board's letter advising motion to reconsider be filed promptly, dated.
1.15.59	New York Mailers' and Int'l. Typographical Union's petition for rehearing filed.
1.21.59	Order correcting decision and order dated.
1.30.59	New York Mailers' and Int'l. Typographical Union's petition for rehearing on the January 21, 1959 order correcting decision and order, filed.
2. 6.59	News Syndicate Co.'s petition for rehearing on the Bd's decision and order as corrected, filed.
3. 2.59	Board's order denying motions and clarifying its order, dated.

1

Stenographic Transcript of Testimony at Hearing of November 12, 1957.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

DB/sc

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual
and
PUBLISHER'S ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual
and
PUBLISHER'S ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual
and
THE WALL STREET JOURNAL,
DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHER'S ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

—o—

Stenographic Transcript of Testimony at Hearing of November 12, 1957.

2

2 Park Avenue,
New York, New York,
Tuesday, November 12, 1957

Met, pursuant to notice, at 1:00 o'clock p. m.

Before: Louis Libbin, Trial Examiner.

Appearances:

Harold L. Richman, Esq., 2 Park Avenue, New York, New York, appearing on behalf of the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, By: J. Howard Carter, Esq., and Andrew L. Hughes, Esq., 220 East 42nd Street, New York, New York, appearing on behalf of News Syndicate Co., Inc., and Publishers' Association of New York City.

Sidney Sugarman, Esq., 295 Madison Avenue, New York, New York, appearing on behalf of New York Mailers' Union No. 6, Respondent.

Gerhard P. Van Arkel, Esq., 1701 K Street, N. W., Washington, D. C., appearing on behalf of International Typographical Union, AFL-CIO, Intervenor.

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PROCEEDINGS

Trial Examiner Libbin: Come to order.

This is a formal hearing before the National Labor Relations Board in the following consolidated cases: In the Matter of News Syndicate Company, *et al.*, Case No. 2-CA-4967; and in the Matter of New York Mailers' Union No.

6, International Typographical Union, AFL-CIO, *et al.*, Case No. 2-CB-1769, and Case No. 2-CB-1807.

The Trial Examiner conducting this hearing is Louis Libbin.

Will counsel and other representatives for the parties please state their appearances for the record?

Mr. Richman: For the General Counsel, Harold L. Richman.

Trial Examiner: For the respondents?

Mr. Carter: For the respondent, and the Publishers' Association who are designated in the format as a party to the contract, J. Howard Carter, 220 East 42nd Street, New York City.

Trial Examiner: That is the respondent company?

Mr. Carter: Yes, sir.

Mr. Sugarman: For New York Mailers' Union No. 6, a respondent union, Sidney Sugarman, counsel, 295 Madison Avenue, New York 17.

Mr. Van Arkel: For the intervenor, International,

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Gerhard P. Van Arkel, 1701 K Street N. W., Washington, D. C.

Trial Examiner: Are there any other appearances?

The Trial Examiner will grant an automatic exception to all adverse rulings.

• • •

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Trial Examiner: There being no objections, General Counsel's Exhibits 1(a) through 1(kk), inclusive, is received in evidence.

• • •

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Mr. Richman: • • •

While we are on that, Mr. Examiner, I would like to have marked for identification, as General Counsel's Exhibit 2, this agreement to which we are referring. It is entitled "Agreement between Publishers' Association of New York City and New York Mailers' Union No. 6, Effective December 18, 1954, Expiring December 7, 1956."

• • •

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Trial Examiner: Can we have a stipulation that that is or was the contract in effect at the time stated by the General Counsel?

Mr. Carter: Yes, sir.

Mr. Sugarman: Yes, sir.

Trial Examiner: All parties so stipulate?

Mr. Richman: Yes, sir.

Trial Examiner: With that understanding, there being no objection, it may be received as General Counsel's Exhibit 2.

• • •

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Mr. Richman: Mr. Carter has made reference to the current contract, and I would like to have that marked for identification and offer it in evidence also as General Counsel's Exhibit 3.

That is titled "Agreement Between Publishers' Association of New York City and New York Mailers' Union No. 6, Effective December 8, 1956, and Expiring December 7, 1958."

• • •

Trial Examiner: Can we have a similar stipulation on Exhibit 3?

Mr. Sugarman: No objection.

Trial Examiner: All parties agree that that is the contract which was in effect on the date stated therein?

Mr. Carter: Yes, sir.

Trial Examiner: With that understanding, and I take it there being no objection, it may be received as General Counsel's Exhibit 3.

• • •

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Mr. Carter: In an extension of Mr. Van Arkel's motion, and in lieu of the introduction in evidence of these two exhibits, might we inquire of the General Counsel which specific provisions of those collective bargaining agreements he refers to?

• • •

Mr. Richman: Yes.

I shall check at a later point and see if the numbering applies to Exhibit 3; I think it does.

Those are: Sections 1, 2, 4, 5, 17, 20(a), 20(b), and 24.

At this point, I would like to say that this enumeration is for the present General Counsel's answer to Mr. Van Arkel's question about which provisions of the contract are being questioned by the General Counsel.

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I don't think I will have any more, but I would like to reserve the opportunity to amend this enumeration in case I do.

Trial Examiner: At which time you will make a motion?

Mr. Richman: Yes, I will make the motion.

Mr. Van Arkel: I certainly object to that reservation, Mr. Examiner. After all, the reason for inquiring about this is to frame the issues.

Trial Examiner: We don't have to go into that now: At such time as a motion is made, I will at that time hear argument and rule on it.

• • •

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Mr. Richman: General Counsel has reason to believe that the same, or substantially the same, provisions are found in General Counsel's Exhibit 4 for identification, and were in effect during 1956.

Therefore, in further answer to Mr. Van Arkel, I shall cite the following of the general laws which General Counsel contends were incorporated into the contract, General Counsel's Exhibits 2 and 3, by reference.

These are: Article 3, Section 12 of the general laws, found in General Counsel's Exhibit 4 for identification, on page 111; Article 5, Section 10 and Section 11, found on page 115; Article 10, Sections 1 and 2, found on pages 118 and 119; Article 10, Section 5, and Article 10, Section 6, pages 119 and 120.

The same reservation is made with respect to the articles just mentioned by me; that I may at a later time, and I wish to reserve the right, add to these provisions that I have just cited.

Mr. Van Arkel: I object to the reservation.

• • •

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Mr. Richman: I would like to have marked for identification, as General Counsel's Exhibit 5, a document entitled "Constitution and By-Laws, New York Mailers' Union No. 6, International Typographical Union."

• • •

Mr. Richman: The title page indicates that the last revision of this document was June, 1954.

Stipulation of Counsel.

I would like to ask for a stipulation that this was the constitution and by-laws of the local union in effect during 1956.

Mr. Sugarman: We so stipulate.

• • •

34

Trial Examiner: There being no objection, it may be received as General Counsel's Exhibit 5.

• • •

Mr. Richman: With respect to General Counsel's Exhibit 5, I would like to call the attention of the Trial Examiner to the following sections to which we will make reference:

Article 1, Section 7; Article 2, Section 2; Article

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3, Section 1; Article 14, Section 2; Article 15, Sections 4, 7, 15 and 17; Article 16, Sections 1 and 2.

Now, these were all sections of the constitution.

With respect to the by-laws of the union also in General Counsel Exhibit 5: Article 2, Sections 2 and 17; Article 4, Sections 1, 2, 3 and 5; Article 11, Sections 1, 4, 5 and 7.

There is one further provision which the General Counsel will refer to in the course of this case, and that is found in the I. T. U. constitution, which is General Counsel's Exhibit 4 for identification. That is Article 12, Sections 5 and 6, which sections are part of "the duties of membership" as outlined in the constitution of the I. T. U.

The same reservation is made with respect to the sections of the Mailers' constitution and by-laws, and the I. T. U. constitution, as I made on the other sections of the General Law.

• • •

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Mr. Van Arkel: I would be glad to enter into this stipulation:

That the International Typographical Union and its

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subordinate unions have not filed the materials specified in Sections 9(f), (g) and (h) of the Act.

Trial Examiner: Do you so stipulate, Mr. Sugarman?

Mr. Sugarman: Yes.

Mr. Richman: I will take Mr. Van Arkel's reframing of my statement.

Mr. Sugarman: And Mailers' Union No. 6 has made no such filing.

* * *

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BURTON RANDALL, called as a witness by and on behalf of the General Counsel,

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and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) What is your name, sir? A. Burton Randall.

Q. Your address? A. 34 Center Drive, Syosset, New York.

Q. Where are you employed at present? A. At the Wouka Distributing Company, 111 Cliff Street, New York.

Q. What is your position there? A. Production manager.

Q. Are you a member of the Mailers' Union No. 6? A. No, I am not.

Q. Are you an employee of the Daily News? A. Yes.

Q. What type of work do you do for them? A. I am a mailer.

Q. When did you begin working for the Daily News? A. I started applying for work in November, 1945. I believe I was first hired in January or February of 1946.

Q. Do you work for them on any regular occasion? A. I work there regularly on Friday and Saturday nights.

Q. Directing your attention to 1956 and 1957, who, on behalf of the Daily News, did the hiring on the days that you

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applied for work? A. It was usually Mr. Rotenberg.

Q. Do you know his first name? A. Louis.

Q. His position? A. Superintendent of the mail room.

Q. Do you know who the chapel chairman for Mailers' Union No. 6 was during 1956? A. I think at that time it may have been Phil Gold. I know it is now George Cornish. I don't know just when the change took place.

Q. During 1956, did you work regularly every Friday and Saturday night? A. Practically every Friday and Saturday night, yes.

Q. Did you receive work each time that you applied for employment during 1956? A. Yes, I did.

Q. Is there another word that you have in the mail room for applying for work? A. Shaping.

* * *

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Q. (By Mr. Richman) Start from the beginning and tell us what happens when you shape. A. There are certain definite hours at which time we will be put to work, and those who wish to work appear for the shape up. They appear on the floor—

Q. The floor of what? A. The floor of the mail room.

Q. And that mail room is located where? A. On the 41st Street side of the ground floor of the News Building.

Q. What happens? A. We form a semi-circle, or a rough semi-circle around the person doing the hiring, usually the superintendent of the mail room, and we stand there so he can see us and recognize us, and then according to his needs he hires the men that he wants. It is usually in a priority order.

50

Q. Is there any particular time when the shape takes place on Friday? A. On Friday night, the New York shape usually takes place at about ten to seven, or five to seven.

Q. What about Saturday night? A. On Saturday night, it usually starts at 5:30.

Q. To your knowledge, are these two nights the busiest for the newspaper? A. I am pretty sure they are.

Q. Is there such a thing as a priority list, to your knowledge? A. Yes, there is.

Q. Have you ever seen a priority list? A. I have.

Q. Where did you see it? A. On the table that the mail superintendent uses as a desk when he does the hiring.

Q. Is there a bulletin board of the union on the premises? A. Yes, there is.

Q. Did you ever see a priority list on that bulletin board? A. Yes, I did.

Mr. Richman: I would like to have marked for identification, as General Counsel's Exhibit 6, a sheet of

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paper containing names and headed "Daily News Priority."

Q. (By Mr. Richman) Mr. Randall, I show you General Counsel's Exhibit 6 for identification, and ask you whether you have ever seen this list before. A. Either this or one exactly like it.

Q. Where did you see it? A. On the bulletin board in the Daily News in a glass case.

Q. Can you give us a date at which time you saw this, or after which time you saw this on the bulletin board? A. I know it was after the new union cards were given out, which would be after June 10th of 1956.

Q. You saw this list some time after June 10th, 1956, and thereafter; is that correct? A. Right.

• • •

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Trial Examiner: So far as I understand it, the witness has testified that this document, which is General Counsel's Exhibit 6 for identification, is a document which he has seen on the union bulletin board, or one exactly like it.

Do you offer it just for that purpose at this time?

Mr. Richman: At this time, yes; let me restrict it to that.

Trial Examiner: Is there any objection to that?

55

Mr. Carter: For that limited purpose, no.

Mr. Sugarman: No, sir.

Trial Examiner: For that purpose, it will be received as indicated as General Counsel's Exhibit No. 6.

• • •

Q. (By Mr. Richman) Mr. Randall, I think you were telling us what occurs at the shape, or, rather, when you shape. You say that Mr. Rotenberg selects you.

Will you tell us what Mr. Rotenberg does? A. Mr. Rotenberg tells you what time you are to start and who is to go to work.

Q. Does he have any particular order that he follows? A. Yes, he does.

Q. What is that order, to the best of your knowledge? A. First of all, the regular men already have their assignments, and they automatically go to work without making the shape. Then the regular substitutes are the next ones that are hired. After that, if there are any other union men from any other shops who are there, they are hired; and then, after that, the non-union men are hired according

to the priority listing he has.

Q. You were one of the non-union men; is that correct? A. That is correct.

Q. Prior to June 10th, did you have any position or any priority as among the non-union group of men? A. Yes, sir; I was the third one hired, or the third one on the list. One of the men who was ahead of me usually came in only on Saturday night, so that means on Friday night, for example, I would be the second one hired.

Q. And on Saturday night? A. I would be the third one.

Q. Of the non-union men? A. Of the non-union men.

Q. At the beginning, you spoke of the regular men having their assignments.

Are these regular men known by any other name? A. They are men who have steady jobs.

Trial Examiner: A regular man, I understood you to say, does not shape up?

The Witness: No, sir. They are the ones who have certain nights that they know they are going

to work five nights a week, and which nights they are, and certain nights they have off.

It is not a question of anything. They know that they are going to work on Monday, Tuesday, Wednesday,

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Thursday or Friday, and they just come in on those days.

Q. (By Mr. Richman) In 1956, did you work any other night but a Friday or a Saturday night? A. Yes, I did.

Q. In what position or in what priority were you hired? A. In the same priority I had held on Friday or Saturday nights.

Q. What about 1955? Did you work on any other night but a Saturday or a Friday night? A. Yes, I did.

Q. In what position were you hired then? A. In the same priority that I held on Friday and Saturday.

Q. Namely, you were third on the list? A. Third on the list; and hired depending on whether either of the other two men were in.

Q. After Mr. Rotenberg tells a man to work, or makes his selection, what happens? A. Usually, the man has been given a starting time. There are different starting times, and—

Q. Who gives the men the starting time? A. Mr. Rotenberg.

Q. What does he tell them? A. For example, you might say it is a Saturday night, and the majority of the men are hired to start work at six

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o'clock. We usually would be hired between 5:30 and a quarter to six; so he would tell you six o'clock.

After that, when he had enough men for six o'clock, he might tell one or two more men that he might need them to start work at seven; and after a while he would have some more men starting at nine o'clock.

Q. What you have just told us is a practice that you have witnessed? A. Yes.

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Q. With respect to your position in the hiring of non-union extras prior to July 22nd, 1956, again, what was your position? A. Prior to that, I was third on the list to be hired of the non-union men.

Q. That was for Friday? A. That was for all during the week.

Q. For all days, Friday, Saturday and other days? A. Yes, that's right.

Q. Are there occasions when Mr. Rotenberg didn't do the hiring personally? A. Yes. There are times when he was off, or he was off for some other reason, and one of the foremen did the hiring.

Q. Did he follow the same order of hiring? A. He followed the same order, yes.

Q. Could you briefly tell us what kind of work you performed in the mail room during the seven years that you worked there? A. I performed almost every job that a mailer is called upon to perform.

Q. Specifically?

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A. I have worked on the escalator; I have taken the papers off from the conveyors when they come down from the presses; I tied up bundles with ropes; I wired them up on the wiring machine; I inserted the papers, the different sections, together; I handled the wrappers to see that the

proper wrapper designating the location goes on the correct bundles; I have wrapped up mail; put papers into individual wrappers to be mailed out to individuals or companies throughout the country; I have pushed papers along; I have loaded skids, and I have stacked bundles.

Q. Are those operations performed by regular substitutes? A. Yes.

Q. Are those operations performed by regular situation holders? A. Yes.

Q. Are those operations normally performed by outside card men employed for the night by the Daily News? A. Yes.

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Q. Did anything happen to your priority or your position

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in hiring after June 10th, 1956 A. Yes, it did.

Q. What? A. Well, from being the third non-union man on the list, I became the first, but the thirty-odd men who were behind me were now put to work ahead of me.

Q. Were they put to work under any particular title? A. They now became union men. They were now substitutes.

Q. What do you mean by that? A. They were now substitutes.

Q. Could you look at General Counsel's Exhibit 6 in evidence and tell me which of these men you are referring to? A. Well, the last group of men here.

Q. Starting with which name and in which column? A. Reading from left to right, the third column under "Substitutes," about midway down where the print changes there; it is much larger print.

The first name on the list was one of the men who was already being hired ahead of me.

Trial Examiner: Will you name him?

The Witness: That was Maresco.

The following men had formerly been hired after me. Do you want me to name them all?

Q. (By Mr. Richman) No, it is not necessary. A. Those men were then hired ahead of me.

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Q. All the names after Maresco were men who were hired after you? A. And who were now hired ahead of me.

Q. These men, who you say were hired after you, had they been hired after you on days other than Friday and Saturday? A. Yes; at any time I went to work they were hired after me, with the exception of Maresco who was one of the two men ahead of me.

Q. Do you know these men by name? A. I know most of them quite well.

Q. Do you know them all by sight? A. Yes, I do.

Q. Were these men, including Maresco and all others following him on this list, hired before or after these outside yard men? A. Prior to June 10th, they were hired after.

Mr. Carter: I object to that, Mr. Examiner. That is much too general. It seems to me if we are dealing here with charges of discrimination, we are entitled to be confronted with the specific proof as to when the discriminations occurred and who was involved in it, rather than a general statement that some men on a day a couple of years ago were hired before or were hired after.

Trial Examiner: What you say may go to the weight to

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be accorded to the evidence, but I don't think it is an objection as to the admissibility.

I will overrule your objection.

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Q. Now, after June 10th? A. After June 10th, they were hired before any outside card men came in.

Q. What did these outside card men do when they did come in? A. They would shape the same as the rest of us, with the exception if they weren't known to be union men, they would make themselves known as such.

Q. Have you ever seen or heard that happen? A. Yes, I have.

Trial Examiner: You have used the phrase "outside card men." Will you explain for the record what you mean by that?

The Witness: An outside card man is a man carrying a union card who normally works on a different paper. Either on his day off or on some other day, he comes in to a different shop than the one he normally works in to apply for work.

Trial Examiner: You say he has a union card?

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The Witness: Yes, sir.

Trial Examiner: Is it any specific union?

The Witness: It is Local No. 6.

Q. (By Mr. Richman) The Mailers' Union? A. Yes.

Q. As a result of your now being first on the list of non-union men to be hired, but following these thirty-one others, what happened to you insofar as your working conditions were concerned?

Did anything happen to you as far as your working conditions were concerned? A. Yes, it did.

Q. Tell us about that, please. A. As I said before, the foreman who assigns the jobs makes up his list from the hiring list, and the jobs are assigned according to the order in which you were hired. The easier jobs go to the men hired first, and so on down the list.

Also, if there are only a special number of men needed for an earlier starting time, then those who come later down the list get a later starting time.

Q. What does a later starting time mean to you? A. It means to you if you are there, for example, on a Friday night at 5:30 hoping to start work at six, and you are not high enough up on the list to start work at six, you

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have to wait until seven to start work, or possibly until nine to start work.

Q. Has that happened to you? A. I usually don't have to wait on Saturday night; but on Friday night, where I at one time would get a starting time of 7:05, I would now get eight o'clock.

Q. In other words, you were waiting around? A. I waited around fifty-five minutes.

Q. As a result of a later starting time, do you have a later finishing time? A. Yes, we do. We work eight hours.

Mr. Richman: The record will show, Mr. Examiner, when the witness filed the charges. That was on June 25th, 1956.

Q. (By Mr. Richman) Did anything happen to you with respect to your hiring position after July 15th? A. Yes, it did.

Q. Tell us what, please.

Trial Examiner: What year?

Mr. Richman: 1956.

A. I applied for work on a Sunday night—

Q. Do you recall which Sunday that was? A. I don't exactly recall now. I know it was a Sunday in the early part of July.

Q. Was it July 15th?

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A. About that date, yes.

Q. What happened? A. I applied for work and I was told that—Mr. Rotenberg told me he had received orders from Mr. Smollon that I was not to be put on to work any night except Friday or Saturday until every other man that was shaping for a job had been put to work. He told me he was sorry about it, but there was nothing he could do under the circumstances but to follow instructions.

Q. Where did this conversation take place? A. It took place in Mr. Rotenberg's office.

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Q. (By Mr. Richman) You had this conversation with Mr. Rotenberg in July, you say? A. That's right.

Q. Which part of July, as far as you remember? A. The latter part of July.

Q. Had you been hired for any day other than Friday or Saturday in July?

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A. Yes, I had.

Q. Do you recall what day of the week that was? A. It was also a Sunday. It was the week before this incident. Mr. Rotenberg didn't do the hiring that night.

Q. Who did the hiring on the Sunday that you were hired, Mr. Randall? A. I believe it was Mr. Reiner.

Q. What is his position? A. He is a foreman at the News.

Q. Did you have this conversation with Mr. Rotenberg the following Sunday? A. The following Sunday.

Q. Had you applied for work the following Sunday on the day you had the conversation with Mr. Reiner? A. Yes; that is why I was there. In fact, I told Mr. Rotenberg that I only wish he had told me at the start of the shape so that I could have gone home immediately, because there were enough men there to cover the jobs that were vacant.

Q. Prior to this Sunday on which you were actually hired, had you been working Fridays and Saturdays? A. Yes, sir.

Q. Had you been hired in your then regular spot? A. My new regular spot.

Q. After this conversation with Mr. Rotenberg, did you

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shape again on any night other than Fridays or Saturdays? A. No, I didn't; * * *

Q. (By Mr. Richman) Was there any change, Mr. Randall, in your overtime earnings, around this period, or after this period? A. Yes, there definitely was.

Q. Could you tell us what the change was? A. Prior to my filing this complaint, I averaged at least three or four hours overtime a month; and since filing this complaint, I think I have averaged three or four hours for the total year.

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Q. (By Mr. Richman) Mr. Randall, on that night you had the conversation with Mr. Rotenberg—

Trial Examiner: Do you know how many men were hired that night?

Q. (By Mr. Richman) Do you know how many non-union men were hired? A. I know that three or four were hired.

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Q. (By Mr. Richman) Mr. Randall, after you spoke to Mr. Rotenberg, did you then have a new spot for nights other than Friday and Saturday?

Mr. Carter: I object to that, Mr. Examiner, primarily because there isn't any evidence that indicates that he had a spot on any priority list, if one indeed did exist, for nights other than Friday and Saturday, primarily because I think his own testimony indicated that except for rare instances, he didn't apply for work for a long period of years other than on Friday and Saturday nights.

Trial Examiner: I will overrule the objection.

The Witness: Could I have the question again, please?

Mr. Richman: Read the question, please.

(Question read.)

A. Yes, I did.

Q. (By Mr. Richman) When was that? A. Last.

Q. Last of which group? A. Of all groups.

Q. Before this conversation, what was your understanding as to your spot?

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A. I was the number one non-union man to be hired.

Q. (By Mr. Richman) That was for all days? A. For all days.

Q. On the night that you had the conversation, how many non-union men did you see at the time you were there? A. There must have been at least a dozen.

Q. How many non-union men were hired by Mr. Rotenberg? A. At least three or four.

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CROSS EXAMINATION:

Q. (By Mr. Carter) Mr. Randall, how long have you been working for the Wouka Distributing Company, if that is the proper pronunciation?

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A. For about seven years.

Q. Would that take you back to approximately 1950, or in that area? A. Yes, it would.

Q. Have you been working steadily and with regularity for this Wouka Distributing Company, from, say, 1950 down through the present time?

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A. Yes.

Q. (By Mr. Carter) Is that a day-time job? A. Yes, it is.

Q. Has it been a day job for the period of time covering approximately seven years? A. Yes.

Q. What are your hours with Wouka? A. From five in the morning until two or three in the afternoon.

Q. Have those been your hours with regularity? A. Yes.

Q. Prior to the time you decided to apply for work in the newspaper industry in metropolitan New York, did you have a day-time job with some firm or corporation unrelated to the newspaper business? A. No. When I got out of the service I applied for work with the newspapers.

Q. As I understand it, you first applied for work at the News in the mail room in November of 1946, and succeeded in catching four night's work in January of 1946; is that about it? A. That is correct.

Q. When you first applied, of course, you applied in the capacity of a non-union man, I take it?

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A. Yes.

Q. Did you shape? A. Yes, I did.

Q. Was it by your own choice that commencing at or about that time, or shortly thereafter, that your work was confined to Friday and Saturday nights? A. At that time I was not working at all, except for the work that I got at the newspaper.

Q. When, after January of 1946, did you commence to work with regularity in the day-time? A. The latter part of 1946.

Q. For whom did you work commencing late 1946? A. At that time, it was Maurella Products.

Q. Was that a day-time job? A. Yes, it was.

Q. What were the hours, approximately? A. Normal hours. It was about eight to four, or eight to 4:30, something like that.

Q. Let's confine ourselves for the moment to the period from January 1946 to late 1946, as you put it.

If I understand your testimony on direct examination at least during that period you received work in the mail room of the News with regularity every Friday and Saturday nights? A. No, sir, not at that time. At that time there was

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not that much work.

Q. Again, if you will, confining ourselves to that period in 1946, did you keep any record of the number of nights' work that you received at the News?

* * *

The Witness: In 1946, I didn't get enough work to keep a record of it. I believe I only worked two or three times the entire year.

Q. (By Mr. Carter) In 1946?

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A. Yes, sir.

That was not due to my not showing up, but due to the fact that I was so far down the hiring list that I was not put on.

Q. In other words, in 1946, so far as you know from your personal observation, there was a hiring list in the mail room of the Daily News, was there not? A. I believe there was a hiring list or there was an order in which the men were put on.

Q. Did you observe enough of the hiring practices at the News during that period to tell us that even then they had a priority and seniority list for hiring purposes? A. I believe they did.

Q. Were you given to understand that those nights when you shaped and didn't receive work, it was because your place was too far down on the list to obtain work? A. Yes, sir.

Q. Do you have any idea of how many times you shaped during that 1946 period in relation to the number of nights' work you received? A. I would say that I shaped almost on the average of five nights a week; not necessarily the same nights, but five nights during the week, and I don't think I worked more than three or four times that year.

Q. Tell me this: You were told, were you not, that by

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reason of your newness to the industry—I am talking about 1946—and by reason of the vicissitudes of the business, if

you will, that your chances for getting work weren't good as an extra? A. Yes, sir.

Q. You were applying for work as an extra, were you not? A. Yes, sir.

Q. You knew that at the News they had a category of employees in the mail room who were known as substitutes? A. Yes, sir.

Q. Were you given to understand that there was a priority and seniority list for substitutes? A. Yes, sir.

Q. Were you made to realize that substitutes were men who for some period of time had been working with regularity, either five days or five nights each week, in the mail room? A. No, not necessarily, sir.

I understood that a substitute was a man having a union card, but not a steady job.

Q. Were you also given to understand that even in that period there were some men in the substitute category who did not hold union cards? A. We didn't call them substitutes, sir.

Q. What did you call them? A. They were non-union men like myself.

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Q. And who were receiving work in preference to you? A. Yes, sir.

Q. Were you given to understand that their preferential treatment of you was by reason of their seniority and their longer length of shaping and service to the News? A. Yes, sir.

Q. As far back as 1946—and then we will go on to a later period of time, Mr. Examiner—to your knowledge, were lists kept by either the superintendent or the foreman of the mail room with respect to extras? A. In that period, I really couldn't tell you.

Q. I take it that there did come a period of time when it was brought to your attention that employees in a category of extras, of which you were one, were hired on a basis of their place on the priority or seniority list; isn't that the fact? A. Yes, sir.

Q. In point of time, so that we can get a continuity to this picture, and since your history does go back apparently to 1946, approximately what year was it when you first became apprised of the fact that: (a) you were in the extra category of employment; and (b) your employment as an extra depended to a large measure upon the place that your name was on the seniority list of extras? A. Well, the situation sort of solidified around 1950.

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Q. During the year 1950, were you still working for this Maurella Products? A. I think I parted company with them prior to 1950.

Q. Did you have a day job in 1950? A. During some time of the year I did. There was also a period when I didn't have any.

Q. In an effort to jump these periods of years, would you say that from 1950 to, say, June or July of 1956, inclusive, you worked with some degree of regularity at the mail room of the News in the category of an extra? A. Yes, sir.

Q. In 1950 did you shape more than your Friday and Saturday nights? A. Yes, sir.

Q. Approximately how often did you shape? A. Well, during my period of unemployment, which I am not sure how long it was, I probably shaped five nights a week.

Q. And got two nights? A. And got two nights, yes, sir.

Q. I understand that you got those two nights with regularity, they being Friday and Saturday? A. Yes, sir.

Q. On occasions when you received these two nights, did you get all the benefits every other employee got?

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A. I believe there is a welfare benefit which I didn't receive because I didn't work enough days. But as far as the men on the floor, the same pay and hours, yes, I did.

Q. Vacation credits? A. Yes, sir.

Q. You say except for the welfare fund, you received the same benefits commencing in 1950 as every other man on the floor? A. Yes.

Q. Was your exclusion from this welfare benefit plan, so far as you know, based primarily on the fact that under it you had not qualified for it? A. Yes, sir.

Q. Did there come a time when you did qualify for it? A. I really don't know, sir. I didn't keep a record of that.

Q. Do you know whether you are qualified for it now? A. I don't believe I am.

Q. Do you know whether you paid any money into the welfare fund? A. I believe the money is deducted.

Q. It is deducted? A. I think so; I am not sure.

Q. For a period of how long has it been deducted from your pay check?

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A. I guess from when I started working there.

Q. So, what you are saying, in effect, is that you are contributing to the welfare plan in effect between the Union and the News, but for one reason or another you are not familiar with the benefits that might accrue to you as a result of it; is that it? A. That is correct.

Q. So that, as you sit there now, I take it, when you

are employed you are being accorded every contractual benefit that every other man on the floor is being accorded?

Mr. Richman: Objection; that is not the testimony.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) Going back again very briefly to 1950, you told us that Friday and Saturday nights were the busiest nights, so far as you know, with the paper, and with some degree of regularity you obtained work? A. Yes, sir.

Q. You had to shape for that work, did you not? A. Yes, sir.

Q. When you shaped each of those nights at the hours you mentioned, approximately, on an average, how many other men were shaping with you? A. Probably sixty or seventy.

Q. Can you approximate for us—take a Friday or Saturday night. On an average, how many of those sixty or

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seventy men received work? A. I couldn't say; maybe forty or fifty.

Q. If it was fifty, just for illustrative purposes, and you were getting work in 1950 with regularity on Friday and Saturday nights, then it follows, I take it, that you were being hired at least ahead of twenty others who may not have gotten work; is that right? A. Yes, sir.

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Q. Let me ask you this, and again let us confine ourselves for the moment to the 1950 period:

I take it there came a time, and I assume it was in 1950, where, by reason of your Friday and Saturday night work regularity, you attained sufficient status as an extra em-

ployee that your name was found on a hiring list of some kind; is that right? A. Yes; I think it was about that time that a list came out where my name was up far enough for me to gain some benefits.

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Q. (By Mr. Carter) Do you have any idea as to what that list was for?

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A. Yes, sir.

Q. What was it for? A. The men were given their choice of jobs depending on how high they were up on the list.

Q. To that extent, their place on the list accorded them some benefits? A. Yes, sir.

Q. The benefits accruing to them by reason of their place on the list; is that right? A. As far as I know, yes.

Q. Was their place on the list determined solely on the basis of their seniority? A. I am not sure of it, but I believe so.

Q. Now you believe that; that was of the regular men. Did you have another list there? A. Yes, sir.

Q. How was that characterized? A. Those would be the regular substitutes.

Q. What did you understand was meant by the phrase "regular substitutes"? A. That would be a man who notified the News of his intention and willingness to work for them by putting his card in, as it is called.

Q. Did you also understand that the regular substitutes' list consisted of men who worked with regularity five days.

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or five nights a week, as the case may be? A. Not necessarily did they work with regularity, sir, but they were given the first choice to work after the steady men.

Q. To your knowledge, did the men whose names appeared on the regular substitutes' list work, except for illnesses and involuntary absences, five nights or five days each week with some degree of regularity? A. Sir, sometimes they worked in other places.

Q. I am not talking about other places for the moment. I am sure other men like yourself doubled in brass to augment their living; which is what you were doing, is that right?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) That is pretty common in the newspaper industry for ambitious men, isn't it? A. Yes.

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Q. (By Mr. Carter) Did the priority and seniority places that those regular substitutes had on the list accord them certain benefits, such as promotions, choice of jobs, days off, lay-offs, *et cetera*? A. Well, it afforded them —they were picked first for the job according to their listing.

Q. And I take it to that extent that was a benefit to them, to have a spot on that list, wasn't it? A. Yes, sir.

Q. And the higher the spot, the more likelihood of the benefit accruing to them; is that right? A. Yes, sir.

Q. Now we have two lists: (A) steady job-holders; and (B) regular substitutes? A. Yes, sir.

Q. Everybody, I take it, on either of those lists, would

fall in a category of a regular situation holder? A. No, sir. A regular situation holder was a man who had a regular job that he knew he was going to work five days a week, and he knew what those days were.

Q. Are you implying by that answer that maybe those on the regular substitutes' list had to shape?

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A. Yes, sir, they did.

Q. Is it the fact that even though they had to shape, the men whose names appeared on the regular substitutes' list had been receiving five days or five nights a week work?

Mr. Richman: In what year are we talking about?

Mr. Carter: Say 1953, 1954, 1955 or 1956.

A. They usually did, yes, sir.

Q. Aside from the two lists which you described to us, did you have other lists? A. Yes, sir.

Q. What? A. A list of the non-union men.

Q. How was that list characterized or described? A. That list was also called a priority list, and the men were listed on it in the order of the length of time they had worked for the News.

Q. You told us, I think, that you first saw that list back in 1950? A. About then, yes, sir.

Q. Have you any recollection as to how many names were on that initial list in that category? A. No, sir, I don't.

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Q. At that time were you satisfied when you found the position your name appeared on the list, and that it was placed there by reason of your length of service with the respondent company? A. Yes, sir.

Q. You were given to understand, were you not, that

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irrespective of union or non-union affiliation, the names of the men appearing upon that list, and more particularly the order in which they appeared, was based primarily upon their length of service with the respondent company?

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A. Yes.

Trial Examiner: By whom were you given to understand that?

The Witness: I don't think I could pin it down to any one person, but that was generally understood to be the case.

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Q. (By Mr. Carter) As time marched on, to borrow a phrase, your position on the list changed, didn't it? A. No, sir.

Q. Didn't you move up on the list? A. I was up on that list, sir.

Q. Were you number three on that list since back in 1950 when it was initially promulgated, right up through 1956? A. I believe I was, sir.

Q. Who were the two men ahead of you? Do you know them by name? A. Yes, sir. One was Ralph Maresco; and the other one was Murray Cohen.

Q. Is he still on the list? A. Due to doctor's orders, he stopped shaping for work.

Q. You mean he is not working at the News any more?

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A. No, sir.

Trial Examiner: Did I understand you to say that you had reached number three on the list since 1950?

The Witness: Yes, sir.

Q. (By Mr. Carter) In other words, you were number three from 1950 right through to 1957, were you not? A. Yes, sir.

Mr. Richman: Objection as not the testimony of the witness previously given.

Trial Examiner: It is his testimony now.

I will overrule the objection.

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Q. In 1950, say, or 1951 on, you were regularly employed by day from five a. m. to about two or three p. m. with this Wouka Distributing Company? A. Yes, sir.

Q. Did that have any influence on your decision to pretty much confine your shape and work activities to Friday and

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Saturday nights? A. Yes, sir.

Q. In other words, is it fair to assume that during that period of time you didn't feel, for reasons that would be pretty obvious, that you could afford to indulge in two full-time jobs, a job by day and a job by night? Is that right? A. Yes.

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Q. Is it fair to state that from 1951 on, right through

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until 1957, you confined your shaping activities and your work activities at the News to Friday and Saturday nights primarily because you did have a day-time job and you didn't feel it would be to your best physical interests to

attempt to carry on two full-time jobs, one by day and one by night? A. Well, sir, I primarily shaped Friday and Saturday because I knew I could work on those two days.

Q. Other than that, is what I just said to you a fair assumption? A. Other than that, yes.

Q. I take it for that reason you confined your shaping to Friday and Saturday nights? A. Yes; I usually shaped Friday and Saturday.

Q. Do you think you have a future as a production manager with the Wouka Distributing Company?

Mr. Richman: Objection.

Trial Examiner: Objection sustained.

Q. (By Mr. Carter) Do you have any intention of devoting your time, energy and talents to your job as production manager of Wouka Distributing Company, as distinct from any other work?

Mr. Richman: Objection. It is the same question in another form.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) Let's come up to the period of 1955

and 1956, up to, say, June or July of 1956.

Did you keep any diary or other documentation of your work efforts insofar as the mail room at the News was concerned, or your work productivity? A. Yes, sir.

Q. Do you have them with you? A. No, I don't.

Q. When did you start to keep those records? A. I would say roughly in either 1954 or 1955.

Q. Did you have a purpose? A. Just to know how often I worked.

Q. Was there any other reason? A. Well, I can count

any vacation days up that way. That is based on the number of days you worked.

Q. Do you have that record? A. Not with me.

Q. Do you have it at home? A. Yes, sir.

Q. You kept it in your handwriting? A. It is not much of a handwriting. It is just dots on a calendar.

Q. Will you bring it when you come again? A. Yes, sir.

Q. Is it a fact that for the entire calendar year of 1955, and up through, say, June of 1956, you shaped and worked

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with regularity every Friday and Saturday night? A. Yes, sir.

Q. Can you recall any occasion during that period of time when you shaped for work at the News on those nights and were refused employment? A. No, sir.

Q. Is it the fact that during that period of time there were other men in what might be characterized as substantial numbers who were shaping with you, and who were refused work on those nights? A. I wouldn't say in substantial numbers, sir.

Q. In some numbers? A. Yes, sir.

Q. Is it the fact that on every one of those Friday and Saturday nights during that period there were men who shaped and did not receive work? A. Usually there are some men in that category.

Q. During that same period, 1955 and say the first half of 1956, number one, you were regularly employed day time? A. Yes, sir.

Q. The same employer you now work for? A. Yes, sir.

Q. Secondly, can you approximate for us on how many

occasions during that period you shaped other than Friday and Saturday nights?

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A. I would say at least ten or twelve times.

Q. During an eighteen-month period? A. Yes, sir.

Q. Does your diary or your dot calendar indicate the days upon which you shaped other than Friday and Saturday during that period? A. It would show the days I worked other than Friday night in that period.

Q. It won't show the days you shaped? A. I didn't keep a record of the days I shaped.

Q. You say you shaped on other than Friday and Saturday nights during that period for approximately twelve times? A. Yes, sir.

Q. Of the twelve times, on how many occasions did you receive employment? A. Probably on all twelve.

Q. Was there ever a time, between January 1st, 1955 and the middle of 1956, when you shaped and did not receive work? A. There might have been, sir.

Q. I am not asking you to speculate. We are dealing with facts here.

Trial Examiner: So far as you can remember right now.

The Witness: As far as I can remember right now, no, sir.

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Q. You mentioned the name of this man Maresco? A. Yes, sir.

Q. When did you first meet Maresco? A. I would say around 1951 or 1952.

Q. To your knowledge, had Maresco been shaping and working with regularity in the mail room of the News from 1951 or 1952 down to the present time? A. Yes, sir.

Q. Was Maresco in the category of a regular substitute? A. No, sir; he was a non-union man.

Q. He was a non-union man, you say? A. Yes, sir.

Q. I take it you are not familiar with Maresco's work record at the News, are you, in relation to your own? A. Well, he worked I know, usually on Friday and Saturdays when I was there.

Q. Of course.

On those twelve other nights that you shaped and worked, other than Friday and Saturday, during that eighteen-month period, did you see Maresco there? A. Probably on some of them, yes.

Q. Did you ever talk with him? A. Yes, sir.

Q. Did you learn from him, and possibly from others, that unlike you, Maresco intended to devote his full time,

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talents and energy to the mail phase of the newspaper industry, and was seeking to make that work his life's career?

* * *

Trial Examiner: He is asking him whether he learned it from Maresco or somebody else.

A. I don't know just what he had in mind, sir. I know he was shaping there.

Q. (By Mr. Carter) You know that in contrast to you he was shaping more than Friday and Saturday nights, don't you? A. Yes, sir.

Q. You know that in contrast to you he was shaping five and six nights a week, don't you? A. Yes, sir.

Q. You know in contrast to you that his employment by the News encompassed many more nights work than yours did, don't you? A. Yes, sir.

Q. Would you say that for the period of 1951 to 1956,

Maresco was shaping a minimum of five nights a week? A. As far as I recall of what he told me.

Q. Would you say that his employment might have averaged four or five nights a week?

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A. About that, I would say.

* * *

Q. (By Mr. Carter) This priority list that your name had been on for six or seven years with the clean-up or number three position, was that in existence on, say, the 28th of June, 1956? A. Yes, sir.

Q. Did you see it? A. I don't recall if I saw it just on that date, sir.

* * *

Q. (By Mr. Carter) Where was your name on that list, say, on the 28th of June, 1956? A. I would say it was in the top spot, or the second spot.

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Q. In other words, you had moved up, as of the 28th of June or thereabouts, from number three on the list to number two on the list? A. I had moved up, but I was actually further down on the entire hiring list.

Q. When you say "on the entire hiring list," you lose me, because you were never on the journeyman's list or the steady workers' list, were you? A. No, sir.

Q. That was because you weren't a steady worker? A. That was because I wasn't a union man.

Q. That was because you only worked the two nights a week, wasn't it? A. I couldn't be on that list unless I was a union man.

Q. That is your own conclusion, isn't it? A. Yes, sir.

Q. You weren't a steady worker in contrast to the men

who were on that list who worked five nights a week, were you? A. Sir, they had a regular job assigned to them.

Q. And you didn't, did you? A. No, sir.

Q. You also told us about the regular substitutes' list? A. Yes, sir.

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Q. You described that for us? A. Yes, sir.

Q. Then, as I understood it, the only other list that was in existence at the News for hiring purposes was the one you were on; is that right? A. Yes, sir.

Q. That was known as the extra list? A. Yes, sir; or non-union men.

Q. It was characterized as the extra list, wasn't it? A. We referred to it as the non-union list.

Q. You referred to it; but didn't the list itself characterize the names of the men on it as extras? A. I don't know what heading it had.

Q. That is the only other list that you know of; is that right? A. Yes, sir.

Q. That is the list that you were number three on from way back in 1950 or 1951; is that right? A. Yes, sir.

Q. That is the same list that you were number two on, on or about June 28th, 1956, isn't it? A. Yes, sir; but the regular substitutes' list had grown by thirty-odd names.

Q. Let's get down to that.

From the first of January, 1956, to the first of July,

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1956, would your dot calendar indicate the number of Friday and Saturday nights you worked? A. Yes, sir.

Q. Have you looked at that calendar to refresh your recollection for the testimony you are giving here? A. No, sir, I haven't.

Q. Maybe you don't need to have your recollection refreshed, so let me ask you this question:

Is it a fact that from January 1st, 1956, through June 30th, 1956, you worked with regularity every Friday and Saturday night at the News? A. I would say almost every Friday and Saturday, yes, sir.

Q. I don't want any equivocation unless you don't know.

Now, the fact is, I take it, that if you shaped every Friday and Saturday night from January 1st to June 30th, 1956, you worked, didn't you? A. Yes, sir.

Q. Would you say that is the same through July? A. Yes, sir.

Q. August? A. Yes, sir.

Q. Right down through to the present day? A. Yes, sir.

Q. And all during that period of time, you were still

working days for Wonka Distributing Company; is that right? A. Yes, sir.

Q. Let's get down to this augmentation of the substitutes' list.

By the way, did you ever apply for membership in the union? A. Yes, sir.

Q. When? A. They gave out a slip of paper at one time that you were supposed to fill out in 1956, I think in the spring of 1956.

Q. What happened? A. I forget just what it asked for. It asked for how long you were working there, and whether we would like to work there—I don't know whether it was there, not steady, but whether we wanted to make that our life's work, or some such reason.

Trial Examiner: Who gave you that?

The Witness: The chapel chairman.

Q. (By Mr. Carter) What did you do with it? A. I filled it out and gave it back to them.

Q. Was it a matter of common knowledge in the mail room of the News that you were working at a steady job for six or seven years which occupied your day time? A. There was no secret about it.

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Q. That is the point. Everybody knew it, didn't they? A. Yes, sir.

Q. And also, likewise, everybody knew that for years you had confined your activities in the mail room of the News to Friday and Saturday nights, too, didn't you? A. Primarily.

Q. So that really when we come down to it and you filed this complaint on the 17th of June, as I see it here, 1956, you were complaining about the discrimination in the terms and conditions of your employment at the News, weren't you? A. Yes, sir.

Q. Because, as you say, of your non-membership in the New York Mailers' Union? A. Yes, sir.

Q. Up to that point, isn't it the fact that you had received employment for an approximate seven-year period on every single night you shaped?

Mr. Richman: Objection. That is repetitive. We have that in the testimony already.

Trial Examiner: I will let the witness answer.

A. Yes, sir.

Q. Isn't it the fact that during that entire seven-year period, on any night you shaped you were never deprived of a job because preferential treatment had been given to a member of the Mailers' Union?

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A. No, sir.

Q. How do you reconcile that answer with your sworn testimony that during that entire seven-year period there was never one night when you shaped that you didn't work? A. There were nights during the seven-year period that I shaped and didn't work, sir.

Q. Let's take the eighteen-month period between January 1st, 1955 and June 30th, 1956.

Did you tell us (1) That you worked with regularity every Friday and Saturday night with the News during that period? A. Yes, sir.

Q. Did you also tell us that during that period you had shaped about twelve times other than Friday and Saturday nights? A. Yes, sir.

Q. Did you also tell us that on each of those occasions you had obtained work at the News? A. I believe I told you to the best of my knowledge I had.

Q. We are talking about your knowledge. A. Yes, sir.

Q. You cannot recall any night during that period when you were denied employment, can you? A. I am not sure about that.

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Q. As you sit there now, can you mention any night when you were denied employment during that period of time? A. The only night I can think of would be a night when they had more men than they needed.

Q. I am not asking you to speculate.

I thought, unless I misunderstood you completely, that you told this Board that you shaped about twelve occasions during that period on nights other than Friday and Saturday, and on each occasion you were given work; is that right? A. To the best of my knowledge, yes.

Q. If that is so, doesn't it follow that at least from January 1st, 1955, through June 30th, 1956, and right up to the present day, you have not been denied a night's work at the News because a union man has been given preference? A. No, sir; I was denied a night's work on Sunday, July 22nd, 1956.

Q. We are not talking about Sunday, July 22nd. A. You said to the present day, sir.

Q. I will confine my question to January 1st, 1955, through June 30th, 1956.

Now, if you can recall it, will you answer the question? A. I don't recall any day I was deprived of work.

Q. If you don't recall any time that you were deprived

of work during that period, then it would necessarily follow, wouldn't it, that you not only were not deprived of work, but no union man was given preferential treatment over you?

Mr. Richman: Objection.

Q. (By Mr. Carter) So far as hiring is concerned?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) To come back, you filed this complaint on June 17th, 1956, and, as I indicated before, you were alleging that the News had discriminated against you in its employment of you.

Up to that time, June 17th, 1956, in view of your testimony that you have already given here, what was the discrimination insofar as it affected you that you claim? A. You mean after that date?

Q. No, no; just the reverse, before that date.

You came down to this Region and filed a complaint on June 17th, 1956? A. Yes, sir.

Q. In the vernacular, you must have had a gripe; is that right? A. Yes, sir.

Q. Did you consult with anybody before you came to this Board?

Mr. Richman: Objection. I don't see how it is

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relevant.

Trial Examiner: What is the purpose of this line of questioning?

Mr. Carter: To see whether he was influenced by an outside motive that had nothing to do with discrimination.

Mr. Richman: I renew my objection.

Mr. Carter: He may have been influenced by propaganda or outside influences that have nothing to do with the facts.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) Is your father a member of the union? A. No, sir.

Q. Is your father-in-law? A. Yes, sir.

Q. Did you talk to him about this?

Mr. Richman: Objection. I don't see how this is at all relevant or material.

Trial Examiner: Are you still referring to the filing of a charge?

Mr. Carter: I will withdraw the question.

Trial Examiner: All right.

Q. (By Mr. Carter) You had made up your mind as of June 17th, 1956, when you came down here, that somebody had done something to you, didn't you? A. Yes, sir.

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Q. The conduct which you felt aggrieved about was

in your mind, wasn't it? You were conscious of it? A. Yes, sir.

Q. In view of the testimony that you have given here thus far with respect to your employment at the News for a period prior to the time you filed your charge, and in view of your testimony that you were never deprived of a night's work on any night you shaped, will you tell us what the alleged discrimination was that you had in your mind when you came down to the Board? A. The hiring of these thirty men who formerly had been hired after me, hiring them ahead of me.

Q. You say thirty men were hired ahead of you who formerly had been hired after you? A. Yes, sir.

Q. When did all this occur? A. On June 15th.

Q. How did you learn of this? A. I was there; I saw it.

Q. Do you know the identity of these thirty men? A. Yes, sir.

Q. I take it you are familiar with their identity based upon that list which you hold in your hand, which is General Counsel's Exhibit 6? A. I knew it without that, sir.

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Q. When for the first time did you see General Counsel's Exhibit 6 evidence? A. I don't rightly know, sir.

Q. Have you any idea when it was promulgated? A. No, sir.

Q. Do you know whether it was promulgated before June 15th, 1956 or after June 15th? A. I wouldn't know.

Q. Have you any idea when you first saw the list? A. I saw it after June, 1956.

Q. When? A. I don't know exactly when.

Q. What is the purpose of that list? What does it mean? A. To me, or to the News?

Q. To you. A. To me, it means that these men are all union men and will be hired in that order—that is, as they are on the list.

Q. Does that list contain extras? A. Non-union men, no, sir. There are no non-union men here.

Q. Does it contain substitutes on the right-hand side? A. Yes, sir.

Q. Is it possible, or indeed probable, that that list was promulgated for the first time long after June 15th, 1956?

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A. And it was made up after that date?

Q. Yes. A. I would think so, yes, sir.

Q. In view of that answer, is it fair to assume that when you came to the Board initially on or about the 15th of June, you knew nothing about that list, General Counsel's Exhibit 6 in evidence? A. I didn't know about this list, but I knew that there were thirty more men going to be hired ahead of me.

Q. In actual fact, and in actual practice, these thirty men to whom you refer, even though as you say they may have been hired ahead of you, that never operated to deprive you of a night's work, did it? A. It didn't deprive me of a night's work as yet, sir, no.

Q. When for the first time were any of those unidentified thirty men hired ahead of you?

Mr. Richman: Objection. I don't think they are unidentified.

Trial Examiner: I will sustain the objection, to the phrase 'unidentified men.'

Q. (By Mr. Carter) Give me one specific instance, identifying the person by name, who, prior to June 15th

or June 17th, 1956, was hired ahead of you. A. I believe I have that information home, sir.

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Q. Can you, as you sit there, specifically identify anybody by name, who prior to June 17th, 1956, was hired ahead of you? A. Prior to June 17th—

Q. Prior to the time you filed this complaint, yes. A. Yes, sir.

Q. Who? A. I believe that the—

Q. We don't want your belief; we want facts. A. I will have to get my records, sir.

Q. You mean that as you sit there, without having your recollection refreshed, you cannot answer that question? A. I cannot answer it honestly and truthfully.

Q. We want the truth, you understand that? A. I know that. I don't remember exactly which ones they were.

Q. Do you have records other than this dot calendar that you described to us? A. Yes, sir.

Q. What do these records consist of? A. They would show which men had formerly been hired after me that had been hired ahead of me.

Q. When did you first start to keep that kind of a record? A. After June—I believe I started keeping it on June

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15th, 1956.

Q. You kept it right up to date, did you? A. I kept it for about three or four months.

Q. What was the springboard which led you to start keeping this record on June 15th, 1956? A. Because I wanted to be able to say, if it ever came to an argument with anyone, that I knew definitely that these men had been hired ahead of me.

Q. Did you want to sort of buttress the charge that you knew then you were going to make? A. I didn't know I was going to make the charge at that time.

Q. As I understand it, this discrimination which you are complaining of in your own mind, at least, started on the 15th of June, didn't it? A. Yes, sir.

* * *

Q. (By Mr. Carter) The discrimination which you claim here started on the 15th day of June, 1956; is that right?

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A. Yes, sir.

Q. Within forty-eight hours, namely on June 17th, 1956, you were down here swearing to a complaint before the Board, weren't you? A. Are you sure this was filed on June 17th?

* * *

Q. (By Mr. Carter) This record which I have here before me, Mr. Randall, would indicate that on the 17th of June, 1956, you affixed your signature to what is characterized as a declaration, which in our parlance means a complaint.

Does that coincide with your recollection?

Mr. Richman: Objection. The document speaks for itself; it is in evidence.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) This discrimination which you alleged had only existed, then, for less than forty-eight hours, didn't it? A. Yes, sir.

Q. And you were down at the Board within that forty-eight-hour period filing a charge against us?

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Mr. Richman: Objection.

Trial Examiner: Sustained.

Q. (By Mr. Carter) As of June 17th, name one person who was hired allegedly discriminatorily of you.

Mr. Richman: I object to the form of the question; it calls for a conclusion.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) What time did you file this complaint on June 17th?

Mr. Richman: Objection.

Trial Examiner: I will sustain an objection to the line of questioning with respect to the filing of the charge.

Mr. Carter: This exhibit which I hold in my hand, which is General Counsel's Exhibit 1(j), indicates that the typewritten portion of the charge, insofar as it refers to the date, contains, written in pen, "15", and "June 1956" is typed, so that that part if it would read: "Since on or about June", all in type, "15" in ink, "1956, New York Mailers' Union," and so forth and so on.

The charge or the complaint is signed in ink by Burton Randall as an individual, dated June 17th, 1956.

I am going to ask you, Mr. Examiner, to take judicial

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notice of the fact that June 17th, 1956, was on a Sunday, and also that this office is closed on Sundays.

Q. (By Mr. Carter) Now, Mr. Randall, if June 17th

was on a Sunday, as the calendar indicates, that would mean that June 15th was on a Friday night; is that right?

A. Yes, sir.

Q. Did you work Friday night, June 15th? A. Yes, sir.

Q. Up until that time, had you been down to the Board at all?

Mr. Richman: Objection. I don't see the relevancy here.

Trial Examiner: I will sustain the objection.

I think now you are trying to get the witness to admit a conclusion which you are seeking to establish through the evidence.

I think you are entitled to adduce the evidence, and leave the conclusions to be drawn by the Examiner and the Board, and leave to argument by counsel.

Mr. Carter: By all means; but I am now questioning credibility, and, more importantly, motive.

Mr. Richman: May I make an advance objection to any question that goes to motive, because I don't think that has any place here.

Trial Examiner: A motive in filing the charge?

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Mr. Carter: Yes.

Trial Examiner: What bearing would that have if in fact the allegations of the complaint were sustained by the record?

Mr. Carter: His ulterior motive, and if one was established, it would be reenforced by what might be characterized as a lack of good faith, and would go to the issue of credibility.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) You weren't in this office on June 17th, 1956, were you?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection to the entire line of questioning in that regard.

Mr. Carter: May I just dictate for the record what might be an offer of proof, so that it will be complete? I don't want to belabor the issue, but I would like to go on to something else.

Trial Examiner: You mean you want to state what you intend to prove through this witness?

Mr. Carter: What I want to attempt to elicit through this witness, based upon what is, to me, at least, obvious from General Counsel's Exhibit 1 (j).

Trial Examiner: If it is an offer, it couldn't be an offer of proof, because you don't know what this witness

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will testify to.

Mr. Carter: No; but I would like the record to show the line of interrogation that I was about to pursue, and what I was attempting to elicit.

Trial Examiner: Suppose you state that in the form of argument in support of your question to which I sustained the objection.

Mr. Carter: All right.

June 17th, 1956, was a Sunday. General Counsel's Exhibit 1(j) in evidence is signed, according to it, on June 17th, 1956, Sunday.

The typewritten part of the charge indicates that the alleged discrimination commenced on June 15th, 1956, and the "15th" is filled in by ink.

I want to show by this line of cross examination that in my judgment, at least, this complaint was contemplated and signed by this witness, who is an interested and aggrieved party, simultaneously with or prior to the time he alleges the discrimination occurred.

Trial Examiner: Your position is noted on the record. I will sustain the objection.

Q. (By Mr. Carter) Between June 15th and June 17th, say, or June 18th, what discrimination do you claim occurred in the mail room of the News?

Mr. Richman: Objection.

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I think we should make it clear, or at least I would make it clear, that we are here litigating the allegations of the complaint and not the allegations of the charge.

Trial Examiner: I will sustain the objection to the question.

Q. (By Mr. Carter) You went to work Friday night, June 15th? A. Yes, sir.

Q. What time did you shape? A. 7:05, or about ten to seven.

Q. Were you number two on the extra list that night? A. Yes, sir.

Q. What time were you hired? A. Eight o'clock.

Q. Did you get a full night's pay? A. Yes, sir.

Q. Did you do a full night's work? A. Yes, sir.

Q. Did you shape Saturday night? A. Yes, sir.

Q. What time did you shape? A. 5:30.

Q. What time were you hired? A. Six o'clock.

Q. A full night's work?

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A. Yes, sir.

Q. Did you get a night's pay? A. Yes, sir.

Q. Were there other men on that Friday and Saturday night, June 15th and June 16th, who shaped and were not hired? A. I believe so.

Q. What was different on Friday and Saturday nights, June 15th and 16th, insofar as your hiring was concerned, than the Friday and Saturday night preceding it? A. Well, on the Friday night, June 15th, I shaped to start work at eight o'clock instead of 7:05.

Q. Anything else? A. That is all on that night.

Q. And on Saturday night? A. On Saturday night I started at six o'clock, but that was the normal starting time.

Q. So that the only thing that occurred Friday night, June 15th, the only thing that occurred to you that was different than any other Friday night, is that you were hired approximately fifty minutes after you shaped? A. I was hired for a later starting time than normal.

Q. Eight o'clock; is that right? A. Yes.

Q. You started to shape at what time, 7:10? A. Ten to seven.

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Q. So you waited an hour and ten minutes; is that right? A. Yes.

Q. Is that the only thing that differed on Friday night, June 15th, than on any other night? A. No, sir. The type of work I did was different than if I had started earlier.

Q. Before we get to that, in your experience during all the years that you were shaping and working with regularity on Friday and Saturday nights, were there occasions

when you were hired a half-an-hour or an hour after you shaped? A. Yes, sir.

Q. Would you say that happened with some degree of frequency? A. Yes, sir.

Q. So that the delay in hiring you on Friday night, June 15th, was no different than the experiences you had on other Friday nights, was it? A. Except for one fact, sir.

Q. What was the fact? A. That these thirty men, if they weren't head of me, I would have worked at the earlier time.

Q. You keep mentioning these thirty men.

Are you in a position to give us anything of the history of their employment by the respondent company? A. I know they all started to work there after I did.

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Q. Do you know when? A. Going back from this date, some only two or three years.

Q. You have their names someplace in your records, don't you? A. I have the names of the ones that were hired ahead of me.

Q. Are you going to produce them for us when we come here again? A. I hope to.

Q. Do you have in your documented data, at least to your knowledge, the history of their employment by the News? A. No, sir; I don't have that written down.

Q. Do you have any knowledge as to how often they worked at the News in contrast to your two nights a week? A. I don't have that written down, sir.

Q. You don't know that? A. Not on all of them, no, sir.

Q. Take, for want of a name or in the absence of a

name, if there were included in one of those thirty whose names you haven't given us the benefit of thus far, if there was a man named Joe, and you say he was hired ahead of you that night, with less seniority, can you tell us with what degree of regularity, with emphasis on the number of nights he worked each week, how much more he worked than you did?

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Mr. Richman: Objection.

Mr. Carter: I will withdraw the question.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Carter) On Friday night, June 15th, these thirty men you speak of, did they shape, too? A. The majority of them did, I believe.

Q. They weren't all hired in bulk, were they? A. No, sir.

Q. So that the usual practice prevailed, I take it, in the foreman, or whoever was doing the hiring—he would call out a name and the man would shape up, and he would be hired? A. Yes, sir.

Q. And if you are dealing with thirty men, I would assume that takes some time, doesn't it? A. A few minutes, yes, sir.

Q. Would you agree with me that the thirtieth man on this list who was finally called, he had to wait too, didn't he? A. Probably, yes, sir.

Q. Just like you were waiting? A. Yes, sir.

Q. Was it as a result of what you have already told us of what happened to you on Friday night—namely, that you had to wait for an hour or thereabouts, which wasn't unusual—

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did that lead you to file the charges of discrimination with the board?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Mr. Carter: Mr. Examiner, I would like to have the benefit of the names of these thirty men who thus far have not been identified.

Trial Examiner: Except for that, are you through with your cross examination?

Mr. Carter: No.

Trial Examiner: How much longer do you think you will take?

Mr. Carter: I would like to break it off at this point because when this record is read, I would like to have a certain amount of continuity to it, and this thirty-man item will fit right into this June 15th date.

Mr. Richman: I believe the thirty names are already in the record.

Mr. Carter: Where?

Mr. Richman: On that list.

Mr. Sugarman: It is for identification.

Trial Examiner: Let's not argue about what is in the record. The record will speak for itself.

In view of this question being raised, I suggest to Mr. Richman, if you think it is in the record, that you

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put it in again.

Mr. Richman: I will.

Mr. Carter: I submit it isn't in there. My recollection is that when you received that in evidence I didn't know what it was, and I said I had no objection to it so far as its authenticity was concerned.

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Stenographic Transcript of Testimony at Hearing of November 13, 1957.

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PROCEEDINGS

Trial Examiner Libl[illegible]: Come to order.

Mr. Randall, will you resume the stand?

Whereupon,

BURTON RANDALL, resumed as a witness for and on behalf of the General Counsel, and having been previously duly sworn, was examined and testified further as follows:

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Cross Examination (Continued):

Q. (By Mr. Carter) Mr. Randall, when we adjourned yesterday, you promised to produce the documentary data you had with respect to the thirty-one man whom you mentioned yesterday.

Have you brought that? A. Yes, I have.

Q. I am referring specifically to the evening of June 15th, 1956, which I understand was a Friday night? A. Yes, sir.

Q. I believe you told us yesterday that you did shape that Friday night and you were hired after a delay of approximately one hour for the shift which commenced at eight p. m.? A. That is correct.

Q. I think you also testified that that was not an unusual delay, and that on occasions prior to that you had shaped and been delayed approximately one hour before you were hired; is that right? A. Yes, sir.

Q. Again confining ourselves to the evening of June 15th, with emphasis on these thirty-one men, will you name one man who was hired before you on the evening of June 15th? A. Fred Cornish.

Q. How long had you known Cornish?

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A. I would say for five or six years.

Q. Had you met him in connection with your two-night stint at the News? A. I met him in connection with working at the News, yes, sir.

Q. Have you any personal knowledge as to the average number of weekly shifts Cornish had worked during the two or three years preceding June 15th, 1956? A. No, sir, I wouldn't know exactly how many.

Q. Had you ever discussed that with the men? A. Not in that respect. I knew that they were coming down.

Q. If I suggested to you that Cornish was and had been a regular shapee for a period of years prior to 1956, and had worked on an average of more than three nights each week during that period of time, would you disagree with that?

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A. I wouldn't disagree with that statement.

Q. (By Mr. Carter) On the evening of June 15th, did Cornish shape with you? A. Yes, sir.

Q. To your knowledge, had he been shaping previously with you? A. Yes, sir.

Q. What time did Cornish start to shape that night? A. The shape was at ten to seven.

Q. Was Cornish there at ten minutes to seven? A. Yes, sir.

Q. As of June 15th, was Cornish's name on this extra list? A. Yes, sir.

Q. In relation to your place on the list, where was Cornish? A. On the extra list as of June 15th, that list had been changed, so he was no longer on it. He was now on the substitute list.

Q. Was Cornish one of those men who had received a card

from the Mailers' Union? A. Yes.

Q. Incidentally, so far as you know, had Cornish and others received an application for membership in the union at or about the same time you received one? A. I didn't receive an application for membership. We just received a little form.

Q. A questionnaire? A. That's right. Then later on these men who were later given cards received applications.

Q. Have you any idea of the approximate number of men who had received these questionnaires? A. The questionnaires went out to almost everyone that was shaping, I believe.

Q. Approximately when was it? A. I think it was in the spring of 1956.

Q. Do you have the questionnaire that you received? A. No, sir. We returned that to the chapel chairman.

Q. Do you recall that one of the questions on it was designed to ascertain the average number of nights you worked? A. Yes, sir.

Q. And did you put down "two"? A. Yes, sir. I think I wrote down "Two or more."

Q. To your knowledge, were there other shapees who received these questionnaires who averaged more than two

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nights a week? A. I imagine some of them did.

Q. Were you told that the purpose of the questionnaire was to find out how many men who were not members of the union intended to make the mailing end of the newspaper business their chief means of livelihood? A. I believe that question was on the questionnaire.

Q. Were you also told, or were you given to understand, that all those who for a two-year period, who had worked on an average of two nights weekly, would be taken into the union? A. No, sir, not at that time.

Q. Did there come a time when you found that out? A. Yes; after the cards were given out.

Q. To your knowledge, were the cards given out on the basis of an average three nights' work each week for a year or a two-year period prior to their issuance? A. Yes, sir.

Q. Were you told that by reason of your two nights weekly average that you weren't qualified for membership in the union in that regard? A. Yes, sir.

Q. Who told you that? A. I discussed that with Mr. Smollon. At the same time, he also told me that that was not the main reason. He said

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that the main reason was that he didn't feel I showed enough interest, I believe he said.

Q. Was that, if you know, Mr. Randall, predicated on the fact that you had only been working on an average of

two nights a week? A. No, sir, because he said that that was not the main factor, and I told him that if he checked my work record he would find that I was a lot more steady in my shaping and in my working than some of the men than had been given the cards.

They had just crowded in enough working days to qualify, either through just some incident or through some knowledge of how the choice was going to be made to give out cards, and that during the summer, when they weren't going to school and things like that, they had crowded in the number of days necessary. I only missed by about two vacation days.

Q. By the way, had Mr. Smollon told you what the standard was work-wise for admission to the union at that that time? A. No, sir.

Q. As I understand it, approximately thirty-one men, some time in the spring or around June of 1956, were admitted to the union and given cards? A. Yes, sir.

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Q. You weren't one of them? A. That is correct.

Q. On the evening of June 15th, was Fred Cornish in the group who was given a union card? A. Yes, sir.

Q. Did he shape that night? A. Yes, sir.

Q. Have you any knowledge as to how long he was shaping that evening before he was hired? A. How long? He might come ten or fifteen minutes before the shape, or he might come an hour before if he had something to discuss with one of the men, or if he had nothing else to do. The shape actually didn't take place until ten to seven.

Q. I am assuming that if the shape takes place at 6:50 p. m., as you said yesterday, all the men who are shaping are not hired in a bunch or in one fell swoop, are they?

A. No; but all the men who want to work are there at that time.

Q. It doesn't necessarily follow that even though the men wished to work, that they are necessary hired, does it? A. No, sir.

Q. Again confining ourselves to this evening on June 15th with respect to Cornish, have you any personal knowledge as to how long he had been shaping that evening before he

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was hired? A. Well, he showed up at the shape at ten to seven.

Q. With you? A. Yes.

Q. You have told us you were hired for the eight o'clock shift? A. Yes.

Q. What time were you hired for the eight o'clock shift? A. At about seven o'clock.

Q. In other words, as of seven p. m., after shaping for ten minutes, you were notified by the foreman or some other supervisory employee that you were going to get a night's work? A. Yes, sir.

Q. But that your night wouldn't begin until eight o'clock? A. That is correct.

Q. With respect to Cornish, can you enlighten us as to when he was notified, (a) That he was to receive a night's work; and (b) What shift he was to be on? A. Maybe at five to seven.

Q. What shift did Cornish work? A. He started at 7:05.

Q. And finished at one a. m.? A. It is an eight-hour night, so he finished about—they get knocked off about ten to one or a quarter to one.

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Q. What time did you knock off? A. About ten to two or a quarter to two.

Q. How many other men do you have in your book? A. There are five others besides Cornish.

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Q. (By Mr. Carter) Will you give me the names of the others quickly? A. Alex Parajos, there was Joe Reres, there was Israel Carlin, and Guido Musella, and there is another one—I have his nickname down here; that was Matizgecka.

Q. You have given us the names of approximately six out of thirty-one? A. Those are the only six who shaped that night.

Q. Where were the other twenty-five, if you know? A. I wouldn't know whether they were home or working someplace else. I have no way of knowing that.

Q. On Saturday night, June 16th, were they the only six who shaped? A. Only one of those shaped, but there were four others that shaped that hadn't shaped the Friday previous.

Q. Different than these five you gave us? A. Yes, sir.

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Q. With respect to the five names you mentioned, other than Cornish, all of them shaped on Friday night, June 15th? A. Yes, sir.

Q. All of them were hired? A. Yes, sir.

Q. Were they all hired for the seven-o'clock shift or the eight-o'clock shift? A. Seven o'clock.

Q. Did you discuss this hiring with anybody in authority at the News that evening? A. I don't believe I did, sir.

Q. Did you at any time thereafter? A. I don't think so.

Q. How many other names do you have on that list that you have before you? A. That was for Saturday, June 16th. I have some for—

Q. I thought you said that was for Friday, June 15th. A. The first names I gave you, the names I read out; that was the total I had that went to work ahead of me that night.

Q. How many other names do you have on that list? A. For that night?

Q. For any night. A. I have some on the list for Saturday, June 16th.

Q. How many do you have in that category?

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A. Five.

Q. Do you have any for any other night? A. I have some for Friday, June 22nd, and I have other lists running through to September.

Q. September of 19— A. 1956.

Q. In the period subsequent to June 15th and 16th, 1956, with respect to Friday and Saturday nights, were you hired each Friday and Saturday night that you shaped? A. Yes, sir.

Q. On occasions, were you hired for the seven o'clock shift? A. Yes, sir.

Q. Would you say that occurred with more frequency than otherwise? A. During certain seasons of the year, it occurred more frequently. During the summer, I would be in a better position of being hired for the earlier shift when more men were on vacation.

Q. With reference to your records for the week-end succeeding the 15th or 16th? A. I wouldn't have the time I went to work down.

Q. Are you in a position to tell us, say, for the evenings of June 22nd and June 23rd, which would be the week succeeding, whether you shaped and went to work on the seven

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o'clock shift or not? A. On June 22nd, I went to work on the eight o'clock shift.

Q. How about the 23rd? A. On the 23rd, I would have gone to work on the six o'clock shift.

Q. And you shaped for that? A. Yes, sir.

Q. How about the 29th and 30th? Do you have any records for that? A. My next record looks like the sixth of July, at which time I went to work at eight o'clock.

Q. Would that be a Friday night? A. I believe it would be. Yes, it must have been.

Q. How about Saturday night, the 7th? A. I don't have the 7th here. The next one I have would be July 24th.

Q. Would that be a Saturday night also? A. I believe that is a Friday night.

Q. What time did you start working? A. Eight o'clock.

Q. What time did you shape? A. Ten to seven.

Q. How far do those records go? A. As I say, they are not consistent, but they cover a

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period until September of 1956, I believe.

Q. Will those records indicate that from that period June 15th, to September 15th, say, of 1956, on some occasions you went to work on Friday and Saturday night on the seven o'clock shift, and at other times you went to work on the eight o'clock shift? A. Yes, sir.

Q. Did you say something on your direct examination that after a certain period of time you had refrained from shaping, or are my notes in error on that point? A. I believe I said that in reference to after Mr. Rotenberg told

me that I won't be hired until after everyone else was hired except on Friday or Saturday night, that then I only shaped for Friday and Saturday night.

Q. Is it the fact that from June 15th on, you were hired every Friday night that you shaped? A. Yes, sir.

Q. Since June 15th, 1956, for one reason or another, did you shape on any night other than Friday or Saturday? A. On July 15th, 1956, I shaped on a Sunday night, and was put to work.

Q. You were put to work? A. Yes, sir.

On July 22nd, 1956, I shaped, and it was then that Mr. Rotenberg told me that he had orders from Mr. Smollon not

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to put me to work on any night except Friday or Saturday, until every other man on the floor had been hired, and that was when I didn't—when I stopped shaping any night except Friday or Saturday.

Q. You didn't shape any night other than Friday or Saturday thereafter; is that right? A. Yes, sir.

Mr. Carter: That is all.

Q. (By Mr. Sugarman) Where are you employed, Mr. Randall? A. The Wouka Distributing Corporation.

Q. In what sense did you testify yesterday that you are an employee of the News?

Do you remember using that term? A. Yes, sir. In the sense that I have been working for them for almost ten years.

Q. You don't consider yourself an employee of the News, do you? A. Not in the sense that I don't have a steady job there; but I have been working for them during that period of time. I have received their Christmas bonus for the last four or five years from the News, and I have received vacation benefits from them for a period of years.

Q. Are those bonuses and vacation benefits based on past service rendered?

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A. Yes, sir.

Q. Are they in any way based upon your current status? A. As far as I know, the News is a very complicated organization. The vacation benefits are derived directly from the number of days you have worked; but their bonus system, I understand, is exceedingly complicated and no one actually knows how they figure it out, as far as I know.

Q. You receive your vacation benefits by way of vacation pay, do you not, in the calendar year following the preceding calendar year in which you had rendered any service? A. Yes, sir.

Q. That is computed on what basis? A. On the number of days you have worked.

Q. Are you familiar with the schedule? A. I believe so. You get one day's vacation for the first nine days worked in a year, and then you get one day's vacation for each succeeding sixteen days that you work.

Q. Up to any maximum? A. I believe it is up to fifteen days vacation.

Q. What about fractions of the sixteen-day units? A. As far as I know, that is just lost.

Q. Even if you have worked fifteen? A. Yes; and I have known men to have that happen. They come out at the end of the year, and you are not allowed to work more than five days a week for one company, and near the

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end of the year they will suddenly figure up their vacation days and find out that they need eight more days for another vacation day, and in the time allotted they can only work seven more times for every night they shape, there-

fore they lost a day's vacation for lack of one day, which is the reason I kept a record of days worked.

Q. How many vacation days were you credited with for the year 1955 paid to you in 1956? A. I had six vacation days.

Q. How many shifts of work did you have in 1956? A. In 1956?

Q. In 1955; I beg your pardon. A. I would have had to work—well, I believe I had 104 days of work, which means I would have missed a seventh vacation day by one day of work.

Q. 104 would be exactly, at least in average, two days a week for the fifty-two weeks of the year? A. Yes, sir.

Q. How many shifts did you work in 1954 for which you were paid vacation in 1955? A. I don't have those records. I only started keeping them in 1955.

Q. Would it be about the same? A. I imagine it would.

Q. In the first half of 1956, did you continue that

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same work record of two days a week? A. Pretty much so, sir.

Q. By "pretty much so," do you mean that you ever worked more than two days a week? A. Yes, sir.

Q. In 1956, the first half? A. Yes, sir.

Q. In what week? A. In the week of March 25th, which was a Sunday, I worked that Sunday, and I worked the following Friday and Saturday.

Q. On that Sunday of March 20—what? A. 25th.

Q. —had you worked Saturday, the 24th? A. Yes, sir.

Q. And Friday, the 23rd? A. No, I didn't.

Q. So you only worked two shifts that week? A. Yes, sir.

Q. Were there any weeks at all in 1956, up to July 15th, when you had worked three shifts? A. No, sir.

Q. Were there any weeks at all in 1956, up to the time you filed the charge, in which you had worked fewer than two shifts?

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A. In the week ending—well, I know that Friday, the 2nd and 3rd of March, I didn't work at all.

Q. In that week you didn't report for work and you didn't seek any work and you didn't work? A. No, sir.

Then, February 18th, a Saturday, I didn't work.

Q. You only worked one day that week? A. Yes, sir.

Q. What about the week ending January 10th? A. January 7th, I didn't work that Saturday.

Q. You only worked on Friday that week? A. Yes, sir.

Trial Examiner: You are referring to a week ending January 10th, which is not the end of the week.

Does the week run on certain days?

Mr. Sugarman: Tuesday, as I understand it; that is the payroll week.

Trial Examiner: Suppose you explain that on the record.

Q. (By Mr. Sugarman) Will you confirm that from your own information, that your work week ends on— A. On Monday, and the new work week starts on Tuesday.

Q. When you say "on Tuesday," do you mean on the shift Tuesday night, or starting Monday night? A. Starting Tuesday night.

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Q. For the next pay period? A. That's right.

Q. Were you out sick during that week of March when you didn't work at all? A. I couldn't tell you, sir, at this time.

Q. What was the occasion of your reporting for work on Sunday, July 15th? A. Sir, I felt that they seemed to have issued union cards on the basis of people working a certain number of days. I felt that I would try and work more days in order to qualify if they were going to either reconsider the number of cards they had issued, or issue more.

Q. At one time Mr. Smollon had told you, had he not, that your work record was insufficient, and that if you improved it you would come up for consideration in due course? A. No. If he had made a definite promise like that, it wouldn't have been bad, but he didn't say anything like that.

Q. This was a spontaneous idea of your own, that if you improved your work record you might get a break? A. I felt that they would reconsider it in view of the number of years that I had worked there and the steadiness with which I did work, because I remember telling Mr. Smollon that these men he gave cards out to wouldn't even be showing up on the Friday and Saturday nights when they were badly

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needed.

I believe the record will bear out that fact, that to a large extent they have ceased showing up on those nights.

Q. Did you decide to go in on July 15th and seek work so as to test whether or not you could get work on a Sunday? A. No, sir; I didn't think there would be any question of it.

Q. Isn't it a fact that somebody told you to do that, to go in on Sunday and see what happened? A. No, sir.

Q. When you did report for work on that night, July 15th, you got work? A. Yes, sir. Mr. Rotenberg wasn't there, and Mr. Reiner hired me.

Q. What is the significance you would have me draw from the fact that Mr. Rotenberg wasn't there? A. I don't believe, in view of what happened the following week, that if Mr. Rotenberg had been there I wouldn't have been hired.

Q. This is just hindsight.

Mr. Rotenberg hadn't said anything to you up until July 15th, had he? A. No, sir.

Q. Did Mr. Reiner take you on immediately when you shaped for an early start?

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A. No, sir; I believe I was hired for ten o'clock time.

Q. What time did you report that night? A. I imagine it was about seven o'clock. In fact, I was the last man to go to work.

Q. Were any people taken on before you who had previously—that is, previous to June 10th—been taken on on a Sunday night after you? A. I believe so, sir.

Q. Who were they? A. I have that list somewhere here.

Q. Is that your slip for July 15th? A. No, sir; this is June 15th. I don't seem to be able to locate it now, but I know I had it.

I can't find that right now, sir.

Q. Are you sure, however, that you have it among those slips? If so, please take your time. A. I am sure I have it somewhere.

(Witness examines documents.)

I am sorry; I can't find it. I do recall that on the ten o'clock shift there was one man, John Conway, who had just received his card, and he was hired. He had come in late that night and hadn't made the early shape.

Also on the ten o'clock shift there were three or four outside card men that were on the early shift, I believe

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the 7:05 shift, and they were several of the men who had just received cards. There were a couple of outside card men who had made the early shift, too.

Q. When had you last previously sought work on a Sunday night? A. I wouldn't have a record of when I sought it, but I have a record of the last time I worked on a Sunday night.

Q. Was there any time you sought work and didn't get it, other than July 22nd? A. There might have been, sir; I can't tell exactly.

Q. Do you remember ever walking, other than on the night of July 22nd, 1956? A. There have been other nights I shaped and walked, yes, sir. It is either a special night for one reason or another.

Q. A special Friday night or a special Saturday night? A. A special Saturday or during the week.

For example, Sunday night is not always an easy night to get on; they don't need as many men. So it is possible that I would walk some other Sunday night.

Q. And then if Saturday is a holiday, they might go light on a Friday night? A. It might be where they get double pay, and then it would be exceedingly difficult to get on.

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Q. And they might be hiring fewer extras? A. Yes, on a night like that; and then again, all the outside card men come in on those double nights.

Q. All of this might have happened, but you don't recall any incident to which you can refer us? A. A Sunday night I do know that I shaped was the 25th of March, and I worked that night.

Q. The 25th of—when? A. Of March.

Q. 1956? A. Yes.

Q. That was the week-end in which you had not worked on Friday night? A. Yes, sir.

Q. In what order were you hired that night? A. I was hired as the number one non-union man. I was the first non-union man hired that night.

Q. Do you recall whether J. Conway was there that night? A. I wouldn't recall that, sir.

Q. When previously had you worked on a Sunday night? A. Previous to that March?

Q. Yes. A. In December, 1955, I worked Sunday the 11th and Sunday the 18th.

Q. Was J. Conway there those nights?

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A. I couldn't tell you, sir.

Q. Whoever told you in what order you were to be hired on a Sunday night? A. They read the names either from the same list that they had for the other nights, or depending on who was doing the hiring, they would just say, "Who's next," and we would step up in the same order that we were hired any other night.

Q. In the ordinary routine of hiring, would the foreman read off the list and await your response, or would you rather do as you just described, speak up? A. When Mr. Rotenberg did the hiring, he had the list in front of him and he would look at it and look around to see who was there that was on the list, and then call us in that order.

Q. But you are not sure of who was ahead of you on the list for those Sunday nights in December of 1955 when you worked? A. Yes; I know no one was hired ahead of me on the list.

Q. Nobody was what? A. No non-union man was ever hired ahead of me on that list, unless it would have been Ralph Maresco or Murray Cohen.

Q. This you say not from memory, but because you know that you were on the top of a list?

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A. Yes, sir.

Q. And you are sure that that list was applied to you on Sunday? A. Yes, sir. I know that all the men hired went in the same order on Sunday that they went, for example, on Friday or Saturday.

Q. In what order were you?

I will withdraw that question.

Trial Examiner: Will you explain for the record the expression you used, "shaped and walked"?

The Witness: Shaping is showing up for work at the time the work will be given out. When you say "walk," it is not getting the work and being told, "Well, that is all, boys, sorry," and you walk home.

Q. (By Mr. Sugarman) Do you know of anybody at all who, previous to June 10th, 1956 had been behind you on the hiring list, who, after working only two shifts a week—having a record of only having worked two shifts a week—thereafter was hired ahead of you?

Do you understand the question? A. Yes, sir.

I don't recall anyone, no, sir.

Q. In other words, everybody who worked two or one shift a week maintained his position relative to you? A. Yes, sir.

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Q. And the only people who after June 10th, 1956 were hired ahead of you, were people who had previously been

working consistently three or more shifts per week? A. They must have been to get the union cards.

Q. I am not asking you about the union cards. A. Outside of that, I would have no way of knowing how much they worked.

Q. Do you know for a fact who received union cards in June of 1956? A. Yes, sir.

Q. Have you seen the cards? A. No, sir.

Q. What makes you say that particular individuals received union cards? A. Because we were all discussing it. Each man would mention it. I remember when the applications were given out for union membership how elated they were. I remember the discussions we had about how some of them had to raise the initiation fee to put it in. I remember their talk of going down for their physical examinations, and so on.

Q. Incidentally, you would have been elated to have a union card, wouldn't you? A. Yes, sir.

Q. And you actively sought one? A. Yes, sir.

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Q. You did that with the assistance of your father-in-law, who was a union member; is that correct? A. Yes.

Q. The fact that you were denied a union card, for reasons stated to you by Mr. Smollon, was the discrimination you were really concerned about and felt embittered by; is that right?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) You testified yesterday, as I recall, that in your preferred position that you had occupied prior to June 10th, 1956, you were hired and assigned to an early start; is that correct? A. Usually, yes, sir.

Q. And to a start earlier than these thirty men had? A. Not earlier than all of them; sometimes earlier than some of them.

Q. And one of the advantages of that was not only that you could get in and get started earlier, but you could quit earlier; is that right? A. Yes, sir.

Q. Another advantage, I suppose, was that you could get a good head start on overtime; is that right? A. Friday night there wouldn't be any overtime, but Saturday night that would be the case.

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Q. This is one of the main interests of Saturday night work, isn't it? A. The overtime?

Q. Yes. A. I imagine it is.

Q. Another advantage, you said, was that you were assigned, if you were at the top of this hiring list, to the easier work.

Do you remember saying that? A. Yes, sir.

Q. What is the easy work in the mail room? A. For example, inserting papers rather than tying them up; or doing the mail rather than being on a wire machine. Almost everyone, I will say, had to take their turn flying the conveyor, which is taking the papers off the conveyors as they come down from the presses.

Q. That is pretty heavy work, isn't it? A. Yes; but it was pretty well established that each man had to fly one edition.

Q. Did you have experience in all of these activities around the mail room? A. Yes, sir.

Q. Each and every one? A. Those that I have mentioned, yes, sir.

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Q. Do you consider yourself a journeyman on the basis of your experience? A. Exactly what is a journeyman, sir?

Q. You don't know what a journeyman is, do you? A. I know what it used to mean, I believe: A man who works at a trade.

Q. Are you familiar with the collective bargaining agreement between the New York Mailers' Union No. 6 and the Publishers' Association, covering the Daily News? A. Not too familiar, no, sir.

Q. Do you have a copy of it? A. No, sir.

Q. You never obtained a copy of it? A. I never had one given to me, no, sir.

Q. Did you ever ask for one from anybody? A. I don't believe so, sir.

Q. You have never seen one? A. I may have seen one, yes, sir.

Q. Have you read one? A. I probably have read it, yes, sir.

Q. Do you recall any reference in the agreement to a

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journeyman?

Mr. Richman: Objection. I think the agreement is in evidence.

Trial Examiner: He is asking him if he recalls. I will let him answer.

A. I recall seeing the word "journeyman," yes, sir.

Q. Do you recall a reference to the fact that the references to the words "employees" and "employee" embrace journeymen and apprentices?

Do you remember that? A. Not too definite, sir. I re-

member seeing those words in there, but I just skimmed through it.

Q. You never thought to ask anybody what a journeyman was? A. The word probably is never used on the floor, sir.

Q. It never occurred to you, as a matter of curiosity, to find out what a journeyman was under the contract which governed the terms and conditions of your employment? A. No, sir; I never looked into that.

Q. You suggested yesterday, as I understood your testimony, that there is some deduction made from your pay for welfare benefits? A. I believe I said I wasn't sure, but I thought there was.

Q. Again, you don't recall any provision of the collective

bargaining agreement concerning the payment toward the welfare trust fund? A. I know there is some payment made, but just what it is or what percentage it is, or anything like that, I don't know, sir.

Q. You have a vague notion that something is taken out of your pay for that purpose? A. The way I understood it, it was taken out of everyone's pay who worked there.

Q. In what amount? A. That I don't know, sir.

Q. It is a matter of no interest to you? A. I don't imagine it could have been more than a half-dollar.

Q. Do you know for a fact that there is a fifty-five-cent contribution made to the welfare fund for every shift you work? A. No, sir, I didn't.

Q. That amount doesn't ring a bell with you? A. No, sir.

Q. Do you know for a fact that you contribute nothing toward it, that it is paid exclusively on a non-contributory basis by the employer? A. No, sir, I didn't know that.

Q. Do you know that you are covered by the welfare plan?

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A. I was led to believe that I wasn't.

Q. Who led you to believe so? A. I remember discussing that with Mr. Maresco.

Q. A fellow employee? A. Yes, sir.

Q. When did you discuss this with him? A. Four or five years ago.

Q. Did he know as much about the contract as you did? A. I don't know what he knew about it.

Q. When was the welfare fund started? A. I couldn't tell you, sir.

Q. Was it in existence four or five years ago? A. That I really couldn't tell you, sir.

Q. Have you ever made any claim under the welfare fund plan? A. No, sir.

Q. For any benefit at all? A. No, sir.

Q. Do you know what you have to do by way of work in order to qualify for benefits under the plan? A. No, sir.

Q. You are really not interested in that, are you; you are just interested in a night's pay? A. No, sir.

Q. What are you interested in?

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Mr. Richman: Objection. I don't know if we are getting anywhere at all by going into this line of testimony.

Trial Examiner: Sustained.

Q. (By Mr. Sugarman) What are you interested in concerning your employment at the News?

Mr. Richman: Objection.

Trial Examiner: Is there any contention of discrimination with respect to the welfare fund?

Mr. Richman: No.

Trial Examiner: There is no claim in that regard, as I understand.

Q. (By Mr. Sugarman) Are you interested in being a permanent, full-time employee of the News?

Mr. Richman: Objection. I don't see how that is relevant here.

Trial Examiner: I will let him answer.

A. I was at that time, yes, sir.

Q. You are no longer? A. I am a little hurt by what has happened to me.

Q. You resent what the News has done to you, or what? A. I resent what the News has done or what the union has done—I resent the feeling that after all the time I have worked there, I just sort of have been shunted aside.

Q. When, for the first time, did you decide that you

would like to be a permanent, full-time employee of the News? A. In 1945.

Q. What did you do to become such an employee? A. I started shaping at the News.

Q. How many nights a week? A. Seven.

Q. For how long did you keep that up? A. For approximately six months.

Q. By that time, you weren't a full-time, permanent employee? A. In that time, I believe, I only got one night's work, sir.

Q. How do you become a regular, permanent, full-time employee? A. Well, the way it is worked is that evidently you shape, you shape, and you keep on shaping until you get known, and then hope the next time they give out union cards you will be given one. Then you can put your card into the News and become a regular substitute at the News.

Q. Who put that idea in your head? A. That is the common knowledge on the floor.

Q. But you don't take the trouble to read your contract, do you? A. No, sir; we weren't given any to read.

Q. It was withheld from you?

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A. It wasn't withheld, sir. If I had gone to someone and asked for it, I don't know whether I would be given it or not; but as a non-union man, we weren't given any or there was none posted anyplace for us to read.

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Q. (By Mr. Sugarman) Do you know how a man becomes a regular situation holder? A. I believe so.

Q. How? A. Well, he puts his union card in the News as a regular substitute.

Q. That is number one, the union card? That is fixed in your mind; is that right? A. Yes, sir.

Q. And number two, what else happens? A. As a steady situation holder leaves or retires or dies, or for any reason that job becomes vacant, the number one regular substitute is moved up on to the steady position.

Q. Did anyone, in your conversation with fellow-employees, ever tell you that a man can become a regular situation holder by working five shifts a week for ten consecutive weeks, provided he is not merely substituting for an absent regular situation holder? A. No, sir.

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Q. No one ever told you that? A. No, sir.

Q. This was news to you? A. Yes, sir.

Q. Would you be surprised to hear that this has been in the contract for years and years, before you ever thought

to work at the News? A. I don't know of any situation where it ever occurred though, sir.

Q. Did you ever try it, except in 1945 when you tried it for a few months? A. I tried to obtain steady work there, sir, but I had a family to support and if I could only work one day in six months I had to go out and get another job.

Q. If you had to shape, as you say, and catch work five days a week for ten consecutive weeks, and maybe catch them or maybe not, and therefore maybe become a regular situation holder or maybe not, you weren't taking a chance on that because you had certain family duties you must take care of? A. If I could have gotten even three or four shifts a week, it would have been fine.

Q. But that was while you were unemployed otherwise? A. That is when I first started shaping, when I got out of service.

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Q. (By Mr. Sugarman) Are you familiar with any understanding between the News and the New York Mailers' Union under which your method of hiring is governed? A. The way I understand it, sir—well, the regular situation holders already have their positions, so they are not hired nightly. The regular substitutes would then be hired.

After that, any union man who shapes for work would be hired. After them, if there are still jobs vacant, they take the non-union men.

Q. And you have been taken as a non-union man? A. Yes, sir.

Q. I asked about the method of your being taken, the method of hiring you have been testifying to, and the order in which the hiring was done.

I asked you: Do you know of any understanding between

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the management and the union under which you are to be hired in accordance with any set order. A. Well, the order I have just named, sir.

Q. Let's take your last group. A. The non-union men, you mean?

Q. Call them non-union men.

Do you know of any understanding between the management and the union as to the order in which non-union men are to be hired? A. I know that non-union men are hired in the order of their seniority.

Trial Examiner: That is not the question.

The question is whether you know if the union and the company have an understanding as to how they are to be hired.

The Witness: I wouldn't know that, sir.

Q. (By Mr. Sugarman) How many extras are generally hired on a Friday night? A. I would judge roughly around forty or fifty.

Q. How many on Saturday night? A. Maybe a little more.

Q. And Sunday night? A. Sunday night, very few.

Q. What about Monday? A. Monday there isn't too many either.

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Q. How do you know that? A. I know that from the talk of the men, for one thing.

Q. When were you there last on a Monday? A. I don't believe that I ever shaped on Monday, because if I started shaping the full week on Tuesday, and if I worked every day, I would have had my five working days by Saturday.

Q. When did you last shape there on a Tuesday, Wednesday or Thursday, any of those nights? A. I worked on

Tuesday, July 19th, 1955; I worked on Tuesday, Wednesday and Thursday on May 3rd, 4th and 5th of 1955.

Q. Were you out of work in that week? A. No, sir, I don't believe so.

Q. You carried the load of a full-time day job at Wouka, and then the night job right through the week at the News; is that right? A. Yes, sir.

Q. Did you have any trouble getting work when you sought it? A. Not prior to June 15th, 1956, no, sir; not in the last, I will say, four or five years.

Q. Did you have any trouble, let's say, back in 1951?

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The Witness: In 1951, I think it was a little more difficult to work, yes, sir.

Q. (By Mr. Sugarman) Was there a time in 1951 when the same situation developed, that some other fellows came along and jumped you in a big batch? A. I don't know if it was in 1951. It wasn't that they jumped me; it was that the men immediately preceding me on the non-union hiring list were given union cards. I don't know whether it was 1951 or what.

Q. Did they jump you thereafter?

Mr. Richman: Objection.

A. They were already ahead of me.

Mr. Richman: I will withdraw the objection.

Q. (By Mr. Sugarman) They were already ahead of you? A. Yes, sir.

Q. Did anybody who had been behind you thereafter go ahead of you? A. Not at that time, no, sir.

Q. Were the people who then were ahead of you people who had been reporting for work more frequently and regu-

larly and consistently than you had been? A. I wouldn't know how often they report for work, sir.

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Q. When did you say that you saw that Daily News priority sheet for the first time, General Counsel's Exhibit No. 6? A. I said I had seen it some time after June 15th, 1956.

Q. After that Friday, June 15th, 1956; is that right? A. Yes, sir.

Q. Did you see it that night? A. I don't recall just whether I saw it that night or a few weeks after or maybe even a month after.

Q. But those men, whom you have already identified, and some others, all in a total of some thirty, who had been junior to you on the list, went ahead of you and became your seniors for hiring purposes on June 15th? A. Yes, sir.

Q. At that time, did you see their names on a priority list? A. No, sir, I didn't see their names.

Q. When for the first time was a priority list posted on a union bulletin? A. Any priority list?

Q. Yes; that you saw. A. I imagine years ago.

Q. Did anyone ever tell you what that priority list was about, what it was intended to apply to? A. No, sir. I understood it was just a priority list,

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showing the seniority of the men on it.

Q. Did anyone ever tell you that that was the priority list for the union members, and for the union members only? A. No, sir.

Q. So far as you know, some of them may have been non-union men on that list? A. I don't recall knowing anyone on the list that was non-union.

Q. But you don't know that they were all union men? A. I didn't know all the men on the list.

Q. Among those you did know, did you know for a fact that they were union men? A. Yes, sir.

Q. Each and every one? A. Yes, sir.

Q. You are now certain of it? A few minutes ago you weren't quite so certain. A. The ones that I knew, the men that I personally knew whose names were on that list, I knew those men were union men.

Q. Then you say there was a separate list not posted on the bulletin board for the hiring of what you call the non-union men? A. Yes, sir.

Q. How come this fellow Cohen was ahead of you on the

non-union hiring list? A. He had been working there longer than I had.

Q. On what nights? A. He only came down on Saturday nights.

Q. So, then, on Saturday night he was ahead of you? A. Yes, sir. If he came down—which he did rarely—on a Friday night, he also went ahead of me.

Q. He did? A. Yes, sir.

Q. Did you protest? A. No, sir.

Q. He hadn't worked Friday nights and you had been working Friday nights for years.

Had it ever occurred to you to protest? A. He had worked at the News longer than I had, and his priority held throughout the week the same as mine did.

Q. Is it your idea that if you had an original date of employment at the News prior to the original date of employment of another worker at the News, you therefore, by reason of that fact alone, had a vested seniority right? A. That is the way it seemed to work, sir.

Q. The thing that controlled was just the original date of hiring and nothing else? A. That is all as far as I know, sir.

Q. If you had been hired in 1945 for the first time,

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and had worked a shift, and had not shown up again until 1955, your seniority rights would hold, would they? A. No, sir. With a space like that, I don't think they would, no.

Q. How long a space would be allowable? A. That I wouldn't know. That would be up to whoever made up the list.

Q. So that there is something more than the mere original date of hiring that enters into the seniority rights? A. You had to shape with some consistency.

Q. On a particular night? A. On any night.

Q. If you shaped on any night at all with some consistency, as you put it, you would then continue to have the right you had acquired originally, and that right would spread over any other night of the week, even one on which you had never before applied for work; is that right? A. Yes, sir.

Q. That would be so even as against men who had been shaping on that night when you had never worked before, and had been shaping for that night alone for ten years or for twenty years; is that right? A. I don't know if they have been shaping for ten or twenty years.

Q. I am asking you to suppose with me.

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A. It would work that way in my case, sir.

Q. Even though a man has been shaping on a Tuesday night, let's say, faithfully for ten, fifteen or twenty years, and on no other night, but has always made himself avail-

able to the management, if you had been shaping for thirty years on a Saturday night, you would have it over him on Tuesday night; is that right? A. Yes, sir.

Q. That is your idea? A. Yes, sir.

Q. Who told you that? A. I just know from what I have seen, sir.

Q. Who is Mr. Reiner? A. He is one of the foremen at the News.

Q. He is the man who hired you on July 15th, 1956? A. Yes, sir.

Q. No question was raised at that time by him as to your right to go to work? A. No, sir.

Q. And no question was raised by any other employee in your presence as to their right to go to work in preference to yourself? A. No, sir.

Q. So you just went to work? A. Yes, sir.

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Q. When did Maresco start working at the News, do you know? A. No, sir, I don't know.

Q. Some time before you started working there; is that right? A. No, sir; some time after.

Q. How did he manage to be ahead of you on the so-called non-union hiring list along with Mr. Cohen? A. Well, sir, there was a big shake-up when the list was first made out. Prior to that, I had gone ahead of him.

Q. When was the list first made out? A. I believe it was five or six years ago. The list I am talking about was the list that was used up to June 15th, 1956.

Q. That list for the first time was made out five or six years ago, and that would bring it back to 1951 or 1952? A. I believe about that time, sir.

Q. There was some kind of a shake-up, you say? A. Prior to that, I had gone to work ahead of Mr. Maresco.

Q. Who announced that thereafter you were going to work after Maresco? A. When we were put to work, we were put to work in a new order.

Q. Did you squawk?

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A. Not too much, sir.

Q. Had Maresco squawked and gotten his preferred position over you? A. I don't know.

Q. Do you know the reason or the occasion for this shake-up you speak of? A. Well, up to that time the first top few men were going to work in fairly steady rotation; I believe that the rest of them would be more or less haphazard. Finally, there were so many complaints about it that this list was made up so each one would know exactly the order they went to work in.

Q. And Maresco was put ahead of you, even though he had started working at the News at a later date than your original date? A. Yes, sir.

Q. So that this is not a ranking in accordance with seniority or original date of employment, is it? A. Well, that wasn't, no, sir.

Q. Do you know of any others who may have been behind you on that list who had started working before you? A. No, sir; I don't think there were any men there on that list who had started working before me.

Q. Are you sure of that? A. Fairly sure, yes.

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Q. The only deviation made, then, was in the case of Maresco? A. As far as I was concerned, sir.

Q. You weren't interested in the fellows behind you? If they had started before you, it didn't matter, so long as on the list you headed them; is that right? A. If they

started before me, sir, I am sure they would have said something.

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Q. (By Mr. Sugarman) Whenever outside card men, as you called them, I think, came in on a particular night when you were applying for work, and were put to work ahead of you, did you ever protest to the foreman? A. No, sir.

Q. You just took it? A. There wouldn't have been any sense to protesting.

Q. Did you ever try it? Did you ever hear anybody try it? A. Nobody ever tried it because you knew that the union

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men went ahead of the non-union men.

Q. You thought this was as it should be? A. I know it wouldn't have done me any good to protest it.

Q. Why? A. Because I know it was protested several times in what we call a double night, which is the eve of a holiday, on which double pay is given out, at which time there is an influx of outside card men way out of proportion to a normal night.

Several times we protested at that time and were told that there was nothing they could do about it; they were union men and they went to work ahead of us.

Q. Who did you protest to? A. We protested to the superintendent of the mail room, Mr. Rotenberg.

Q. Can you specify the date on which any such conversation took place? A. I couldn't tell you, no, sir.

Q. You just have some general vague memory that this happened once? A. Once or twice, yes, sir.

Q. Was that on a night when you had to walk as a result? A. I imagine I walked, sir.

Q. Let's not imagine it.

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A. I can't recall, sir.

Q. If you walked, perhaps you would have protested; is that right? A. I imagine so.

Q. Were you one of the protestors? A. No, sir.

Q. Did you ever hear of a grievance? Do you know what that is? A. Yes, sir.

Q. Do you know what an arbitration is? A. Yes, sir.

Q. Do you know whether your collective bargaining agreement provides for grievances and the handling of them through arbitration? A. I don't know what the union's collective bargaining contract is.

Q. You just don't know about that? A. No, sir.

Q. Did you ever hear of any arbitration awards in the mail room? A. No, sir.

Q. You never heard anything about that? A. No, sir.

Q. Have you ever flyed escalator number one in the New York mail room?

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A. Yes, sir.

Q. And number seven? A. Yes, sir.

Q. Twelve? A. Yes, sir.

Q. Six? A. Yes, sir.

Q. Eleven? A. Yes, sir.

Q. You have no information at all that those escalators were involved in a recent arbitration? A. No, sir.

Q. You have seen no difference in the manner of your working and the crew that works on those escalators in recent months? A. No, sir.

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Q. (By Mr. Sugarman) Tell us what Mr. Rotenberg said to you on Sunday, July 22nd, 1956, when you appeared for

work. A. He said, "Randall, I have orders from the president of the union, William Smollon, to put you to work last, after

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all other non-union men, every night except Friday and Saturday." He said, "I am sorry to have to do this, but I have no choice in the matter."

Q. This is something you are now reading into the record in response to my question; is that right? A. Yes, sir.

Q. This is something undoubtedly that you entered in that notebook as you turned your back on Mr. Rotenberg and while it was as fresh in your memory as it could possibly be; is that right? A. Yes, sir.

Q. That wasn't ever written at a subsequent time, but while it was very, very fresh in your mind? A. Yes, sir.

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Q. Thereafter, you never tried a Sunday night again? A. No, sir.

Q. Nor a Monday, Tuesday, Wednesday or Thursday night? A. No, sir; it wouldn't pay.

Q. What? A. It wouldn't have been worth while, in view of what Mr. Rotenberg told me.

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Q. (By Mr. Sugarman) What do you mean, it was not worth while? A. To make the trip in from Long Island, sir, and not go to work, would have been rather foolish.

Q. Although you felt you had a right to go to work as a number two or number three man on a Monday, Tuesday, Wednesday or Thursday, you weren't going to take a chance? A. In view of a flat statement that I won't be put

to work until every other man was put to work, there was very little chance of me being taken.

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Q. Otherwise, you would have shown up on those nights, or some of them? A. Yes, sir.

Q. As you had done some time before? A. As I was planning to do.

Q. Why were you planning to do it? A. I think we went into that before. Because I felt it would be to my advantage to work more often than I had been.

Q. You knew that if you had improved your work after and worked more often and made yourself available for work more often during the week, this was your way to get more secure employment and to to be secure in such employment as you enjoyed until then? A. I felt it would help me if they would reconsider my case.

Q. If who would reconsider your case? A. The membership committee of the union.

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Q. (By Mr. Sugarman) You said that prior to June 10th, 1956, you used to build up as much as three or four hours of overtime a month; is that right? A. Yes, sir.

Q. It was really a lot more than that, wasn't it? A. It probably was.

Q. It was that Saturday night overtime, and that was really the prize, wasn't it? A. There is no overtime for extra men on Friday night.

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Q. How much overtime did you say you have been getting since June 10th, 1956? A. In the next six months, I think I had a total of five hours.

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Q. (By Mr. Van Arkel) This action of June 10th with reference to the thirty-one men we have been discussing, amounted to upgrading these thirty-one men from jobs as extras to jobs as regular substitutes, did it not? A. Yes, sir.

Q. Had there been any previous occasions during the time

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that you worked at the News when such action had been taken? A. Yes, sir.

Q. Had that been the regular policy, to from time to time, as more men were needed, to upgrade them from extras to regular substitutes? A. They were given cards and then upgraded.

Q. I wish you would answer the question yes or no if you can, and if you can't answer it yes or no, explain it. Had that been the previous practice, to upgrade extra men into regular substitutes? A. They got their regular substitutes from the extra men.

Q. Was there ever any occasion while you were at the newspaper when a regular substitute was taken on who had not previously been working as an extra at the newspaper?

Trial Examiner: To your knowledge.

A. I don't know, sir.

Q. You don't know of any such occasion occurring? A. I don't know whether it did occur or not.

Q. Then I take it it would be a fair statement, as far as you observed, that the practice of the paper had been to fill the ranks of the regular substitutes from the ranks of the extras; is that correct?

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A. I believe that was the practice.

Q. (By Mr. Van Arkel) It was true that the paper from time to time did need more regular substitutes, was it not? A. Yes, sir.

Q. Were the ranks of the steady men also filled from the ranks of the regular substitutes? A. Only from those ranks.

Q. Only from those ranks? A. That's right.

Q. And from time to time, and for the reasons you mentioned—death, resignations, or other reasons—steady men would go off and the first priority regular substitute would take their place; is that correct? A. Yes, sir.

Q. As I understand your testimony, any injury that you claim to have suffered resulted solely from the fact that these thirty-one men had been changed in their situations from extra men to regular substitutes; is that correct? A. Yes, sir.

Q. Among these thirty-one men, so far as you know, were there any men who had not, prior to June 10th, 1956, been showing up for work at least three nights or more a week?

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A. No, sir, I don't know of any.

Q. You don't know of any? A. No, sir.

Q. You mentioned that from time to time what you called outside card holders would show up for work; is that correct? A. Yes, sir.

Q. Were these men, so far as you know, all employed as steady men or regular substitutes at other newspapers in the City of New York? A. Yes, sir.

Q. Were any of them not regular men or substitutes at other newspapers in New York City? A. I don't know of any, sir.

Q. Does New York Mailers' Union Local No. 6 admit extras to membership? A. Extra men?

Q. Yes. A. Yes, sir.

Q. They do admit extra men? A. As far as I know.

Q. Why aren't you a member, then? A. They didn't give me a card.

Q. Are there any other extras that have been employed at any time on the News while you were employed there, who were union members?

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A. Extras?

Q. Yes. A. There wouldn't be extras, no, sir.

Q. If you will, try to answer the question, please.

During the time that you have been employed at the Daily News, were there any extra men who were union members?

I think you can answer that yes or no. A. I don't know what you mean, whether there were any extras.

Trial Examiner: Were there any union members who had the status of what you have described to be extra men?

The Witness: Possibly.

Q. (By Mr. Van Arkel) Have you known of any? A. No, sir.

Q. The Examiner's question isn't quite the question I wanted to get the answer to.

Tell us whether, to your knowledge, during the time you worked at the News, any men working as extras were union members. A. I can't quite understand you. To me, an extra was someone who was on my list, the list I was on.

Q. Right. You have testified that you were not a union member? A. Taking that as a basis, there were no union men on that list.

Q. You cannot give us any illustration, during all of

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these years, when any member of the union appeared on the extra list, can you? A. No, sir.

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Q. Would it not be accurate to say that the extras were not admitted to membership in the union, and therefore weren't members of the union, and that when they were upgraded to regular substitutes that they then became eligible for union membership? A. I think it was just the reverse, sir.

Q. Why do you say that? A. Because to become a substitute, you had to give your card to the chapel chairman and signify that you want to work on that particular paper.

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Q. Have you ever examined the laws of the union in this respect? A. No, sir.

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Q. Have you ever examined the provisions of the contract in this respect? A. No, sir.

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Q. You testified, I believe, that you would have been elated had you been given a union card; is that right? A. Yes, sir.

Q. Do you know whether or not there were any men among the extras that were then working with you who were not equally seeking union membership?

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A. The only one that might not have wanted a union card might have been this Murray Cohen.

Q. (By Mr. Van Arkel) Why did he not want one? A. Because I don't imagine he felt that he would have wanted to work more than the one night he was working.

Q. As far as you know, all the other extras were anxious to become union members; is that correct? A. Yes.

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Q. Were they all also anxious to become regular substitutes? A. Yes, sir.

Q. So far as you are aware, have there been, since you were employed at the News, any regular substitutes who did not want to be union members? A. No, sir.

Q. Have there been any steady men who didn't want to be union members? A. No, sir.

Q. In your status as an extra during the years you worked, did you have any ability or right to show up for work and be hired at other newspapers other than the News? A. I could always show up for work, sir, but until I was known I wouldn't have been hired, in all probability, unless they were very short of men.

Q. As I understand your testimony, they had what was in effect a priority list for the extras at the News, did they not? A. Yes, sir.

Q. You were pretty high up on that during most of the time you worked there? A. Yes, sir.

Q. If you had sought work at another newspaper, you would have gone to the bottom of their list of extras, I take

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it? A. Yes, sir.

Q. Could you have established that kind of senority at more than one newspaper? A. Yes, sir.

Q. This would have entailed your showing up at some other paper for work on nights other than Fridays and Saturdays.

Given the fact that you were working at the News on Fridays and Saturdays, you would have to show up for work at other newspapers on other nights; is that right? A. Yes, sir.

Q. Do you know of any men in the industry who work as extras at more than one paper? A. Yes, sir.

Q. There are such men? A. Quite a few, sir.

Q. Those men, I take it, in the same way as at the News, appear on the priority lists for extras at other newspapers? A. Are you speaking of the extra men of the News who are working as extras on other papers also?

Q. Yes. A. Those, I imagine, they appear on the priority lists of other newspapers, but I wouldn't know.

Q. In any event, there is no rule against it?

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A. Not that I know of. I do know quite a few of the men, not only the extras but the regular substitutes, work on other papers besides the News, even the steady men.

Q. When a regular substitute on the News goes to work at another newspaper on a night when he isn't working at the News, is he hired ahead of the extra men on the other paper? A. Yes, sir.

Q. Does the same apply to the steady men? A. Yes, sir.

Q. You testified that in your talk with Mr. Rotenberg on July 22nd, he stated that you were to be put to work after all other non-union men had been hired? A. Yes, sir.

Q. Did he give any reason for that? A. He said those were his instructions from Mr. Smollon.

Q. Did he indicate at all what the reason was why you should have been put back of all non-union men? A. Putting me back of all non-union men put me clear at the end of everyone.

Q. That is what I understand.

Was there any explanation at all given for that rule? A. No, sir.

Q. Do you have any reason that you yourself can assign why you should have been put at the foot of the list of all

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non-union men? A. I imagine that was more or less a retaliation because I filed charges.

Q. Has anyone ever said anything of that kind to you? A. No, sir.

Q. You are sure that you were not mistaken in your conversation, and that you were told that you were to be put to work after all regular substitutes? A. Yes, sir, I am sure.

Q. Except on Friday and Saturday nights? A. Except on Friday and Saturday nights I am put to work after the substitutes, sir.

Q. That is what I understood.

If they were going to retaliate against you, they obviously would have put you at the foot of the list on Friday and

Saturday, wouldn't they? A. I don't know whether they felt they could.

Q. If they could do it on a Sunday or a Monday, they could certainly do it on a Friday, or Saturday, couldn't they? A. I don't know the reason.

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Q. (By Mr. Van Arkel) Can you assign any reason why

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they should take one action with respect to your work on Sunday night, and another with respect to your work on Friday and Saturday? A. They might have thought it would have looked too obvious if they did that to me during Friday and Saturday nights.

Q. So far as you know in general, is the situation you have described at the News also true at other newspapers; namely, that the steady men in general desire to be members of the union? A. Yes, sir.

Q. Does the same apply to the regular substitutes? A. Yes, sir.

Q. In general, do the extras at other newspapers also desire to be promoted to regular substitutes? A. Yes, sir.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) Mr. Randall, would you look at General Counsel's Exhibit 6 in evidence, and tell me whether you see on that exhibit the names of those thirty people who normally were hired behind you, who now are hired ahead of you? A. Yes, sir.

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Trial Examiner: Are you now offering this exhibit for the purpose of having these names in evidence also?

Mr. Richman: Yes; I would make that the second purpose of this exhibit.

Mr. Carter: I would object to it, Mr. Examiner, for this reason:

This witness testified yesterday that he hadn't any definite date in his mind as to when that list was promulgated. I think he testified that as of June 15th, that particular list was not in existence.

With respect to the period past June 15th, he had no idea when for the first time he saw that list. If it is to be used to attempt to prove an alleged hiring discrimination, it seems to me we are entitled to be confronted with the date when he claims that list was first used.

Trial Examiner: It is merely at this time offered for the purpose of identifying the group of thirty men who this witness has testified at one time were hired after him, and subsequent to a date which was mentioned, which I don't recall at this time, were hired before him.

Mr. Carter: We are still in the dark with respect to

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the dates of the alleged discrimination.

Trial Examiner: That is something for the General Counsel to prove. If he doesn't prove it, that is his case.

Mr. Richman: I submit that there is evidence,

but as long as Mr. Carter has raised the point, let me go through that evidence again.

Trial Examiner: Let me say at this point that I will overrule the objection and receive it for the purpose which you noted.

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Q. (By Mr. Richman) Could you take a look at this list again, General Counsel's Exhibit 6?

I call your attention to this group of thirty men. On June 15th, I believe you testified that only some of these men shaped; is that correct? A. Yes.

Q. When they shaped, were they hired before or after you? A. They were hired before me.

Q. Prior to June 15th—the Friday prior to June 15th was June 8th.

Did any of this group of thirty men shape, as far as you recall? A. Yes, there were some.

Q. Were they hired before or after you? A. They were hired after me.

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Q. (By Mr. Richman) As far as you recall, is this order that they appear in, on General Counsel's Exhibit 6, approximately the same order that they appeared on the extra list before they were taken off? A. Yes, sir, approximately so.

Trial Examiner: All right. The exhibit is received with respect to the offer with the qualifications as testified to by the witness.

* * *

Q. (By Mr. Richman) To the best of your knowledge, were there any men in the group of extras who received these union cards who held day jobs outside of the newspaper industry shortly before they received the cards? A. That I don't know, sir.

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Q. (By Mr. Richman) To your knowledge, how is this priority list made up?

Mr. Carter: Which one?

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Mr. Richman: General Counsel's Exhibit 6.

A. I really don't know. As far as I know, it is made up by the union.

Mr. Carter: I ask that that be stricken, Mr. Examiner.

Trial Examiner: You say as far as you know?

The Witness: Yes, sir.

Trial Examiner: How do you know that?

The Witness: It is either that or the News. I really don't know just who makes it up.

Trial Examiner: Your answer is that of your own knowledge, you really don't know?

The Witness: No, sir.

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Q. (By Mr. Richman) When you shaped on these other occasions in 1955 and 1956 on nights other than Friday and Saturday, to the best of your knowledge were you hired in the same order that you were usually hired on Friday and Saturday? A. Yes, sir.

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RE-CROSS EXAMINATION:

Q. (By Mr. Carter) Mr. Randall, I think the record is quite clear with respect to your work record at the News for an appreciable period of time prior to June 15th, 1956, but it isn't clear with respect to the work records of the three Freda boys whose names you mentioned, and Conway.

Do you have any personal knowledge as to the work record, let's say, of Richard Freda, with emphasis on the number of nights he shaped and worked compared to yours, prior to June 15th, 1956? A. I think he worked a very few more than I, just about enough to earn him maybe two more vacation days than I did.

Q. Do you have any records on that, or any personal knowledge? A. Well, sir, I have seen the vacation lists which shows the number of vacation days they have earned in the past two years, and they just earned fifteen, whereas I had earned thirteen.

Q. Have you any knowledge as to when Richard Freda, approximately, commenced to shape? A. No, sir.

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Q. Except for rare occasions, your knowledge of who was working and who was shaping would be pretty much limited to Friday and Saturday nights, wouldn't it? A. No, sir, because it is shop talk of how many nights you worked and who got so many nights and where the best opportunities are to work, *et cetera.*

Q. Even on the basis of shop talk, for what it is worth, did you understand that the three Freda boys, for a substantial period prior to June 15th, 1956, shaped and worked with a great deal more regularity than you had? A. No, sir, not much more.

Q. When you say "not much more," do you agree that they did shape and work with more frequency and regularity than you had? A. Yes, sir.

Q. Would you say the same for Conway? A. They shaped and worked, as I say, more, but not too much more.

Q. Would you say that for Conway? A. Yes, sir.

Q. When they were promoted from the list of extras to regular substitutes, if you want to indulge in shop talk, weren't you given to understand the reason for their promotion and their admission to the union was the fact that they had for a period of time prior to June 15th shaped and worked on

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an average of a minimum of three nights a week? A. About that, sir, yes.

Q. Would you say that same standard was applied to all of the others included in that list of thirty-one who were promoted to regular substitutes? A. Yes, sir.

Mr. Carter: That is all.

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Q. That is about the worst record you have hung up in several years, isn't it? A. Sir, I haven't been able to come in any other nights but Fridays and Saturdays during this year.

Q. You haven't been able to come in? A. I mean it wouldn't have done me any good to come in.

Q. You would have walked? A. I wouldn't have been put to work.

Q. You are sure of that? A. That is what I was told, sir, or words to that effect.

Q. Were all these nights you worked in 1957 Fridays

and Saturdays? A. Yes, sir; because again we referred to the conversation I had with Mr. Rotenberg that I would be put at the end of the list on any other night. Therefore, I hadn't been coming in on any other night.

Q. You have not been coming in? A. No, sir.

Q. You are certain of that?

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A. That I haven't been coming in except on Friday and Saturday?

Q. Yes, sir. A. Yes, sir.

* * *

Mr. Van Arkel: I have a few questions.

Q. (By Mr. Van Arkel) You kept referring, Mr. Randall, to the number of vacation days earned in connection with this upgrading from extras to regular substitutes.

What was the significance of the vacation days earned in that connection? A. I imagine to show the number of days they worked, or approximately the number of days they worked.

Q. Was the number of vacation days earned the rule by which it was determined who would be upgraded and who wouldn't be? Is that your understanding? A. Yes, sir, that was my understanding.

Q. Is there any question in your mind that if you had, for example, as many vacation days to your credit as Mr. Fischer had, that you would have been made a regular substitute? A. I believe I would have, sir.

Q. You believe you would have?

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A. Yes.

Q. Do you believe you also would have been admitted to the union? A. Yes, sir.

* * *

Q. (By Mr. Sugarman) Do you know of anybody with as many vacation days as you had accrued in 1954 and 1955, or with fewer, who was admitted to the union in June of 1956? A. No, sir.

Q. Or who was upgraded? A. No, sir.

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Q. (By Mr. Sugarman) Do you know Joseph Tarnow? A. Yes, sir.

Q. Do you know from your having examined the vacation record that he had as many as fourteen days of vacation for 1954 and 1955? A. Yes, sir.

Q. Which was two more than you had? A. Yes, sir.

Q. And he wasn't admitted to the union; is that correct? A. That is correct.

Q. And Adolph Hoffmeyer had as many as you? A. Yes, sir.

Q. He had twelve, and wasn't admitted to the union? A. Yes, sir.

Q. In both those cases, they weren't upgraded either; is that right? A. No, sir.

Q. And then Mr. Michael Cipriano had thirteen, as against your twelve, and he was neither admitted to the union

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nor upgraded; is that correct? A. That is correct.

Q. And Mr. Frank Fischer had thirteen, and was neither admitted nor upgraded? A. I don't know just how many he had, sir, but I know he wasn't admitted.

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RE-CROSS EXAMINATION (Continued):

Q. (By Mr. Sugarman) Mr. Randall, is it so that Mr. Walter Gorman had as many vacation day credits for 1954 and 1955 as yourself, and was neither admitted to the union or upgraded? A. I am not familiar with his record, sir.

Q. You had twelve; is that correct? A. I believe that is correct.

Q. You don't know that he had twelve? A. No, sir, I don't know that.

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JOHN MORTIMER, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) • • •

Q. By whom are you employed? A. By the New York Daily News, News Syndicate Company, Inc.

Q. The News Syndicate publishes the Daily News; is that correct? A. Yes.

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Q. What is your position there? A. Administrative assistant to the business manager.

Q. What are your duties generally? A. Generally to administer certain labor contracts with which the News

is a party, and to handle certain personnel assignments at the News.

Q. Do those contracts which you administer include the contract between the Publishers' Association and Mailers' Union No. 6? A. Yes.

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Q. Are you familiar with the operations of the mail room at the Daily News insofar as the hiring practices are concerned? A. I am in a general way.

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Q. Have you read the constitution and by-laws of the New York Mailers' Union No. 6? A. No, I never have.

Q. Do you know any of its provisions? A. No.

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Q. Where the contract doesn't specifically cover a working condition, do the general laws of the I. T. U. prevail?

Mr. Carter: I object to that. The contract is the best evidence and it speaks for itself; it is in evidence.

Trial Examiner: I understand your question to be

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where the contract makes no provision?

Mr. Richman: That's right.

Trial Examiner: In other words, it is silent?

Mr. Richman: That's right.

Trial Examiner: I will overrule the objection.

The Witness: It is my understanding that when the contract, which comes first, does not cover a specific subject, and there is an I. T. U. law covering it, generally speaking that is the manner in which the particular thing is handled.

Q. (By Mr. Richman) That is the manner in which the Daily News handles its problems or questions concerning working conditions of mailers? A. As long as it doesn't violate a federal or state law.

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Q. (By Mr. Richman) Mr. Mortimer, is the hiring in the mail room, to the best of your knowledge, conducted under a priority system? A. Yes.

Q. Is such a system provided for in this contract? A. No.

Q. To the best of your knowledge, is there any provision

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of the general laws which governs the hiring under that priority system? A. If you are referring to the priority system with regard to persons other than regular situation holders, I don't believe that the general laws specify the manner in which persons other than regular situation holders will be hired.

Q. Is your answer, then—and correct me if I am wrong—that the hiring system, the priority hiring system that is in force in the mail room, is conducted under the general laws only for the regular situation holders?

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A. Yes, I believe that is true.

Q. Is a priority list in use in the mail room in the Daily News? A. Yes.

Q. I show you General Counsel's Exhibit 6 in evidence. Have you ever seen this before, sir? A. No. I have seen documents which I believe represent this, but I have never read the individual names or studied

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it in that sense. I have studied something up on the board which I assumed was it, but I never have studied it in detail.

Q. So you would say you never saw this before? A. In that sense, yes.

Q. In what sense are you familiar with it? A. I might have seen it up on the board as I passed by, but as far as studying it in detail, I have not ever done that.

Q. Does the superintendent do the hiring in the mail room? A. Yes, sir.

Q. Does he do the hiring when he is on duty? A. Yes.

Q. He doesn't do it on his off nights; is that so? A. Yes. I believe he doesn't.

Q. In hiring mailers, does the superintendent follow the order of names on the priority list? A. It is my understanding that he does.

Q. Does he follow it carefully? A. I don't know whether he follows it carefully or not.

Q. You do know that he does follow it? A. It is my belief that he does, yes.

Q. Who makes up this list, Mr. Mortimer? A. I believe that the superintendent makes it up.

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Q. Where does he get the names for this list? A. I don't know where he gets the names.

Q. Do you know whether or not the chapel chairman supplies him with a list of names to be put on this priority list? A. I don't know whether or not the chapel chairman supplies the names.

Q. I would like to refresh your recollection on the last matter.

Do you recall ever discussing the operation of the priority system with an Examiner of the Labor Board? A. Yes, I do.

Q. Do you recall making an affidavit? A. An affidavit?

Q. Yes; you signed an affidavit? A. I don't know the technical meaning of the word "affidavit." I spoke with a gentleman whose name was Mr. Kull, I believe.

Q. Yes, that is correct. A. Subsequently, he either sent me or gave me a typewritten statement which I took to mean the substance of our conversation. As I thought it was accurate, I verified that that was the substance of our conversation. I signed it saying that it was, and that is what I did.

If that is an affidavit, then that is an affidavit.

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Q. Will you just look at this and read it through and see whether that does refresh your recollection on certain of the points with respect to the priority system that we have just covered?

(Witness examines document.)

A. Yes, I have read it.

Q. Let me ask you this question:

To the best of your knowledge, where does Mr. Rotenberg get the names and the order of names for this priority list? A. If we are talking about the regular situation holders—if I may, because in this statement here I believe what I was talking about was that the priority among the regular situation holders, I believe, is that which is based on material supplied primarily from the union.

Q. By "the union," whom do you mean? A. I presume the shop steward.

Q. Is that to the best of your knowledge, the shop

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steward? A. Yes.

Q. Do you mean the chapel chairman? A. Yes.

If we are talking about priority with regard to persons other than regular situation holders—

Q. You mean regular substitutes? A. Regular substitutes, extras, and so forth—I don't know, and I won't deny or affirm that that sequence of hiring is supplied to the mail room superintendent by the union.

Q. You don't know? A. I don't know that, no.

Q. Does the priority list contain names other than those of regular situation holders? A. Yes.

Q. Does the priority list contain names of regular substitutes? A. Yes.

Q. To the best of your knowledge, does the chapel chairman give the names of these regular substitutes in their order to Mr. Rotenberg?

Mr. Carter: If you know.

A. The answer to that is that I don't know.

When referring to the priority list here, I presume

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we are talking about the priority list of regular situation holders.

Q. You didn't tell that to Mr. Kull, did you? A. He didn't tell me he was talking about a priority list other than of regular situation holders, and I had not seen the particular list referred to and I didn't know at the time that it was all in one list.

In fact, I presumed that there was one list of regular situation holders and another list of persons other than regular situation holders.

Q. Prior to talking to Mr. Kull, had you not seen a priority list on the bulletin board of the union? A. I saw a list, but whether it was a combination list in the sense I have just said, or a separate list set up, I didn't know. The physical manner in which it was set up, I didn't know.

Q. When Mr. Rotenberg doesn't do the hiring, who does? A. I believe his designated representative would do the hiring in his absence.

Q. Do they follow the priority list in hiring mailers? A. I believe they do.

Q. Is there a list for non-union extras? A. I believe there is.

Q. In what order do the extras—

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Mr. Van Arkel: The characterization "non-union," I ask be stricken, Mr. Examiner, as calling for a conclusion.

If he wants to ask about "extras," okay.

Trial Examiner: Is there a list for extras?

The Witness: I believe there is.

Q. (By Mr. Richman) To the best of your knowledge, are these extras union members or non-union members? A. I believe generally speaking—I don't know this specifically, but generally speaking they are not union members.

Q. Do these names appear in any order on that list? A. I don't specifically know if they do or not. I believe they do.

Q. In what order do they appear? A. I believe they appear in the order of their—are we talking about extras?

Q. Yes, we are talking about extras. A. Just to make it clear: An extra, generally speaking, is someone who is not in the regular shape, but someone who shapes less than five days a week.

Is that what we are talking about, a group of that kind?

Q. All right, let's take your definition for convenience sake.

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A. I believe, barring lapses and showing up of a considerable nature, that they would be listed more or less in turn when they showed up at the News from the first day they worked.

Q. In other words, their seniority, shall we call it, dates from the time they first started to work for the Daily News? A. I believe so.

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Q. Is the order of the names on this list followed for all days of the week, to the best of your knowledge? A. Well, I don't know that it is. There is a practice at the News with regard to this group we have defined as extras, that when a person regularly shows up, for example, on Sunday, over a period of time, that he sort of has a claim on that day as opposed—on that Sunday, for example—as opposed to a man who might regularly show up on Saturday, even though the man who showed up on Saturday has a date with the News earlier than the man on Sunday.

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That is my understanding of the practice with regard to that.

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Q. Was there a change in the practice? A. No. I believe this is the practice which has been

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going on for a number of years. Let's say I have learned that this is the case.

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Q. Do you recall testifying just a few minutes ago that to the best of your knowledge the chapel chairman gives to the superintendent the priority list of the regular situation holders?

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A. Yes. I think it is promulgated.

Q. Promulgated by whom? A. From the union, but I don't know the individuals.

Q. Does the company accept that promulgation? A. It is my understanding that that is so.

Q. And the company uses the list in the hiring? A. Yes.

We are talking now about the list with regard to regular situation holders?

Q. That's right, sir. A. Yes.

Q. Have you ever discussed with Mr. Smollon or Mr. O'Hara the order of hiring of mailers in the Daily News mail room? A. The order of hiring non-situation holders?

Q. Mailers generally, regular situation holders and non situation holders. A. Yes.

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Q. (By Mr. Richman) To the best of your knowledge, what is the order of hiring in the Daily News mail room?

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A. First would be the regular situation holders in the shop.

Q. Those on the priority list? A. Yes.

Second would be the regular substitutes in the shop.

Q. Are the regular substitutes on any list? A. I believe they are on the list.

Q. General Counsel's Exhibit 6? A. Yes.

Q. They are hired in the order they appear on General Counsel's Exhibit 6; is that correct? A. I believe so.

Q. Continue, please. A. Regular substitutes from other shops.

Q. You mean other than the Daily News? A. Other than the Daily News, yes, who have at the other newspapers received less than five days work.

Q. How does the Daily News know, or how does Mr. Rotenberg know, or whoever is doing the hiring, whether these men have, in fact, not had their five days at this other shop? A. As I understand it, they ask them if that is the case.

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Q. Who? The hiring foreman would ask them? A. I don't know for a fact precisely how they work that out.

If you mean do we have a company-operated checking system with the other companies, we don't.

Q. Do you know whether the chapel chairman is the person to inquire of these people? A. I believe so, but I don't know that either. I believe that is the case.

Q. Where does your belief come from? A. From conversations I had with Mr. Rotenberg yesterday on the specific question.

Q. Let's go on to the next category. A. The next category are regular situation holders at the News making up a missed day. They may have been sick, or for some reason they missed a day.

Q. The next category after that? A. Regular situation holders at the News seeking a sixth day of work.

Q. And following that, what is the next order of hire? A. Regular situation holders and regular substitutes from

other shops who, I believe—and I may be wrong on this—who are seeking a sixth day. I am not sure about that.

Q. Following that category, what is the next one?

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A. The terminology has been used variously—steady shapers.

Q. Are those the extras? A. Yes.

Q. The steady— A. Steady men, as I understand, by and large, are either men who regularly shape less than five days, or some who are trying to shape throughout the week who are shaping with regularity but not necessarily five days a week.

Q. Is this group in that extra list we spoke about some few questions back? A. I am sorry?

Q. Is this the group that is on that extra list that we spoke about several questions back? A. Yes.

Q. Was Mr. Randall in this group, or is he now in this group? A. I believe so.

Q. And he was in this group for the past few years? A. Yes.

Q. Following this group, is there a further category? A. A category of what I characterize as casuals who would appear intermittently and seek work with no regularity.

Q. Are they on this extra list? A. I don't know. I don't believe so, but I don't really

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know.

Q. To the best of your knowledge, is there usually enough work to cause the hiring or to result in the hiring of all these men from other shops, these card men from other shops? A. On some nights I am sure that there is, and on others I don't know if there is.

Q. You are not sure at all? A. Yes, sir.

Q. I say, you are not sure at all? A. Yes, sir, that is correct.

Q. With respect to this order of hiring that we have just discussed, did Mr. Smollon explain to you that this was the order of hiring that was to be used in the Daily News mail room? A. Did he explain to me that this was the order of hiring that is in use at the Daily News?

Q. Is in use or was to be used? How did he put it? A. At a meeting, at which I among several other representatives of the papers were discussing the hiring procedures, this explanation was given by Mr. Smollon.

Q. When did this meeting take place, approximately? A. In May of 1956.

Q. Where? A. At the Publishers' Association.

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Q. Were representatives of other newspapers present? A. Yes.

Q. Did Mr. Smollon say anything about this order being used at other newspapers? A. Yes; that generally speaking, in the industry, this is the order which is followed.

Q. And by "the industry," do you mean the papers who are signatories to the agreement, General Counsel's Exhibits 2 and 3? A. I understood it to refer to the other papers signatories to the agreement, but not necessarily limited to them.

Q. Now, some time in June of 1956, did you learn that a group of extras had received cards from the union? A. I don't know when I specifically became aware of the situation to which you refer.

Q. You did become aware of it? A. Yes, I did. If

you ask me the date on which I became aware of it, I couldn't say.

Q. Approximately when? A. That was approximately it.

Q. When? In about some time in June? I am not asking you for the specific date. A. I believe it was in that time.

Q. Did the Daily News, to your knowledge, have anything to do with the issuance of these thirty-one cards?

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A. In a sense we did. Some time prior, in a discussion either over the telephone or in person with Mr. Smollon, he asked whether the News would consider reviewing the work records of those people who are on what has been referred to as the extra list, and supplying the union with certain data with regard to the vacation credits earned for certain years, and he explained that the union was interested in seeing whether these people could be given cards, and that a criteria of approximately an average of three days a week over a two-year period was being considered as the basis for increasing their status from that of mere extras to regular subs.

They asked whether we approved of this procedure, and whether we could correlate the data and give it to them.

Q. This was Mr. Smollon's request and statement; is that correct? A. Substantially.

Q. Did the Daily News recommend that a certain number of cards be given out by the union? A. No.

Q. Did the Daily News, to your knowledge, make any suggestion as to the number of cards? A. Cards, no.

Q. Or as to the fact that any additional regular subs were necessary?

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A. We expressed willingness to have additional regular substitutes because we thought it was a good thing. In that sense, we were in complete accord with the program. But we did not initially go to the union and say, "We want more regular substitutes." We did not initiate that.

Q. Did you express agreement after these cards were given out? A. We expressed agreement, at the time the criteria of three days a week was discussed, with the whole program. Actually, after that was done I didn't know the exact amount of time it would take to give out the cards, and the specific means by which that phase of the thing would be done.

But agreement with the program of giving those people who worked a certain amount of days during the period was expressed at the time we gave them the information as to who did receive so many vacation credits during those two years.

To tell you the truth, I didn't know, when the cards were given out—I didn't know to whom they were given out specifically.

Q. Did you know that as soon as these membership cards were issued the number of regular substitutes would be increased?

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A. I presumed that would be the case.

Q. Why? A. Because simultaneously with establishing the criteria for making this distinction between the extras and giving out the information so that all parties understood it was, I thought we were going to move them up to regular situation holders, and I was told by Mr. Smollon that they would receive union cards.

Trial Examiner: Do I understand your testimony that you were told by Mr. Smollon that those who qualified to become regular substitutes in accordance with the criteria set forth would be given union cards?

The Witness: That was my understanding, yes, sir.

Q. (By Mr. Richman) Did you set forth the criteria for becoming regular substitutes, Mr. Mortimer, or was it the union that set forth the criteria for becoming regular substitutes? A. The union suggested three days a week, and we believed that was a fair one, and we agreed with it.

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Q. To the best of your knowledge, is there within the newspaper industry in New York as we have discussed it—namely, the papers published by the signatories to this agreement—is there industry-wide seniority among the employees who work as mailers? A. In the sense that I described this arrangement before, I believe there is.

Q. Only in that sense?

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A. Yes.

Q. Is there anything in the contract that provides for industry-wide seniority? A. No.

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CROSS EXAMINATION:

Q. (By Mr. Sugarman) • • •

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Q. Do you remember a series of conferences starting May 12th, 1954, and running into November—perhaps

some ten or more conferences—November of 1954, between representatives of the Publishers' Association, including yourself, Mr. Smollon, Mr. O'Hara and myself, concerning hiring practices? A. Yes, I do, sir. I don't recall the specific number of occasions, but there was a series of them.

Q. That series of meetings took place, did it not, during the pendency of a collective bargaining agreement and not in connection with the negotiation of a contract? A. Yes, sir.

Q. Do you recall that that meeting was called at the instance of the Publishers' Association to discuss with the union the regularization and standardization of hiring practices at the request of the Publishers? A. Yes.

Q. Do you recall at the first meeting on May 12th, 1954, the presentation and circularization among the parties present, including Mr. Smollon, Mr. O'Hara and myself, of a memorandum bearing that date, and headed "Suggested Approach for Joint Meeting Wednesday, May 12, 1954, of Representatives of

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Mailers' Union No. 6 and Publishers signatory to the Mailers' Contract Regarding Mail Room Hiring Practices," a duplicate of which I hand you? A. I recall it in a general way.

Q. That memorandum was prepared by or in behalf of the Publishers, was it not? A. Yes, it was.

Q. Did you see it for the first time at that meeting, or had it been pre-circulated, do you know, among the Publishers? A. I believe it had been pre-circulated.

Q. Do you recall that at the first meeting that I have described on May 12th, this memorandum was made the basis of the discussion? A. Yes, sir.

Mr. Sugarman: I wish to offer this in evidence. I have but one copy, and it was a duplicated affair and I have an idea that there are other available copies.

Trial Examiner: It may be marked as Mailers' Union No. 6 Exhibit 1 for identification.

(Thereupon, the document above referred to was marked as Mailers' Union No. 6 Exhibit 1 for identification.)

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Trial Examiner: Is there any objection to having it marked in evidence at this time?

Mr. Richman: I would like to see it first.

Trial Examiner: I mean as to its order.

Mr. Richman: No, I have no objection to the order of its going in.

Mr. Sugarman: I will supply duplicates.

Mr. Richman: Are you offering this, Mr. Sugarman?

Mr. Sugarman: Yes.

Mr. Richman: I will object.

First of all, this is a proposal or—what is the heading again? This is just a proposal for a discussion. We have no evidence of what the discussion was or any evidence of what agreement was reached, if any, or any evidence of any practice followed as a result of this discussion.

This is merely one topic that appears to have been thrown on the table.

Trial Examiner: What are you offering it for?

Mr. Sugarman: It seemed to me that however Mr. Richman may feel about the motivation of the charging party, certainly he must have a contrary

feeling about the motivation of the union and the publisher. I sense that the motivation he is driving at is the motivation that might be discriminatory.

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I want to show by this, and by the evidence to follow, the serious purpose of not discriminating with which the publishers and the union have contended with the problem of hiring, and have dealt with a problem of hiring, and have actually administered the system of hiring.

If this doesn't go to motive, then I don't know what could. It is a bare disavowal of improper motive.

Mr. Richman: Mr. Examiner, may I state for the record that we don't question the good faith of the parties in trying to deal with this problem.

What we do allege here is that the conclusions they reached, or the practice that resulted and the contract that resulted, unfortunately, ran afoul of the provisions of the Taft-Hartley Act.

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Trial Examiner: I will overrule the objection and receive it for the purpose stated.

* * *

Q. At the next meeting to which we adjourned after the presentation of this last exhibit, so that the union officials might consider the matter more thoroughly, did the union present to you—that is, did we present, Mr. Smollon, Mr.

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O'Hara and I—present to you representatives of the Pub-

lishers, a counter statement in writing, of which I show you a copy? A. I remember this, yes.

Q. Do you remember that for the remainder of that second meeting, and in the subsequent meetings which followed, the formulation presented by the Publishers, and this counterformulation presented by the Union, were the basis of the discussions as to hiring? A. Yes.

Mr. Sugarman: I wish to offer this statement of May 20th, 1954, in evidence.

Mr. Richman: Same objection for the same reasons.

Mr. Sugarman: The Board already has a copy of it.

Trial Examiner: That will be marked Mailers' Union No. 6 Exhibit No. 2.

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Q. (By Mr. Sugarman) Thereafter, subsequent to May 20th, 1954, in the course of this series of meetings and in preparation for one of the latter meetings toward the fall of 1954, did you receive a copy of this memorandum dated September 9th, 1954, from Mr. William Mapel, the president of the Publishers' Association? A. Yes.

Mr. Sugarman: I wish to offer that in evidence, Mr. Examiner.

Trial Examiner: It may be marked Mailers' No. 6 Exhibit 3.

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Trial Examiner: Was that document addressed to you or to the News?

The Witness: It was, you might say, to a sub-

committee to review the hiring practices of the Publishers, and it was from us to Mr. Mapel.

Mr. Sugarman: As I understand it, it was distributed to all the circulation managers.

The Witness: Yes; and it was used as the basis for a meeting.

Mr. Richman: I will object for the same reasons as before.

Trial Examiner: The same ruling. It will be received.

* * *

Q. (By Mr. Sugarman) Pursuant to the request made in the last exhibit by Mr. Mapel, did you cause your office to collate and prepare and submit to us, in a subsequent assembled meeting, the data contained in this batch of sheets? I haven't fixed the number of them as yet. A. Yes.

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Q. Were these taken from your employment records? A. Yes, sir.

Mr. Sugarman: I wish to offer this document—

Mr. Richman: Mr. Sugarman, if I may suggest, can't we stipulate that the request made in the specific paragraph of this exhibit was honored by the Daily News?

Mr. Sugarman: That stipulation doesn't go quite far enough for my purposes. I appreciate it, except that I—

Mr. Richman: I just did that to hold the record to a minimum.

Trial Examiner: I take it you have the same objection?

Mr. Richman: Yes, I would object to it.

Mr. Sugarman: This is a twenty-page document, as I have just counted them.

Trial Examiner: It will be marked Mailers' Union Exhibit No. 4 for identification.

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Trial Examiner: I will overrule the objection and

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receive it in evidence.

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Mr. Richman: Mr. Sugarman, may I ask, for the sake of the record, because we are not getting duplicates, that you specifically tell us what is in this exhibit of the Mailers?

Mr. Sugarman: This exhibit purports to show in alphabetical order, with social security numbers, all the employees of the mail room on, I take it, the then current payroll.

Mr. Richman: In 1954?

Mr. Sugarman: Yes.

It shows the number of shifts worked by each employee in the last six months of 1953, as well as all the shifts worked by that same employee in the first six months of 1954, totalling the two figures, showing

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whether or not these various employees hold regular situations at other newspapers, and if so, which, and their dates of employment with the News.

Finally, it shows a classification of the employees by the designations Roman Numeral I, Roman Numeral II, and Roman Numeral III insofar as they

fit the information by those numerals requested by Mr. Mapel.

In other words, Roman Numeral I shows those men currently shaping at least five days per week, and who worked a total of at least 156 shifts in the last six months of 1953 and the first six months of 1954, combined.

156 shifts, as you recognize, is three shifts worked and having shaped, as you say, at least five per week.

Roman Numeral II, other men currently shaping at least five days per week, but who didn't work sixteen shifts as provided in category I above.

And Roman Numeral III, extras currently working in the shop who hold regular mailer situations elsewhere in the industry.

You will have that designation I, II or III alongside the names of each of the employees, and blanks where they don't fit into any of these three categories.

Trial Examiner: In other words, the roman numerals conform to those set forth in Mailers' Exhibit 3?

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Mr. Sugarman: That is correct.

The blanks are those which don't conform with any of those categories, and Mr. Randall's name, as you will note, falls into the blank category, if I may call it that.

Mr. Richman: Mr. Sugarman, I would like to have further clarification.

I note that this memorandum, Mailers' Exhibit No. 3, states as category III, "Extras currently

working in your shop who hold regular mailer situations elsewhere in the industry." In addition, there are the other two categories shown.

Is there anywhere on this exhibit a designation for those people who hold regular situations at the Daily News?

Mr. Sugarman: That information wasn't requested by Mr. Mapel, and therefore I take it for that reason alone we didn't supply it.

Mr. Richman: Thank you.

Mr. Sugarman: It may be that that list also contains the names of regular situation holders, but they are not categorized.

Q. (By Mr. Sugarman) Would you know, Mr. Mortimer? A. I don't think it does, but I couldn't tell by just looking at it.

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Q. They are not in category I, II or III, if they are regular situation holders? A. Yes.

Mr. Richman: In other words, to get it straight for the record, regular situation holders, to the best of your knowledge, were not included in this list?

Mr. Sugarman: He just said to the contrary.

The Witness: I don't recall whether they were included in that list, but that doesn't mean anything. It was some time ago and I didn't oversee specifically the making up of the list. The exact form it was sent back in—

Mr. Richman: I am only asking as far as you know.

The Witness: I think it would be better if I said that I don't know.

Trial Examiner: Which is the case?

The Witness: Yes.

Mr. Sugarman: I know that George Cornish is a regular situation holder and was then; George Cornish, not Fred Cornish.

Mr. Richman: No.

Mr. Sugarman: Unless accidentally he was omitted, then I would suppose that this list doesn't show the regular situation holders.

The Witness: That is what I would expect to be the

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case.

Mr. Richman: One further point:

Is this list, to the best of your knowledge—does it show regular substitutes at the Daily News?

The Witness: I would think it would.

Mr. Richman: It would?

The Witness: Yes.

Mr. Richman: Thank you.

Q. (By Mr. Sugarman) As a result of the survey made in the News and the surveys of life character made at the other publishers, were any changes in hiring practices made or agreed upon between the union and the publishers? A. No.

Q. Do you recall going into contract negotiations in the late fall of 1954 looking toward the collective bargaining agreement effective in December of 1954, and running until December of 1956? A. Yes.

Q. To your recollection, were any proposals made by either the union or the publishers for the introduction of any provisions concerning hiring practices other than those which had prevailed in the past? A. I don't recollect that

there were specific proposals on that. I don't recollect specific proposals.

Q. At any rate, no changes were made in the agreement?

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A. No, sir.

Q. As they applied to hiring? A. No, sir.

Mr. Sugarman: That is all I have.

* * *

Q. (By Mr. Van Arkel) Mr. Mortimer, insofar as regular situation holders and substitutes at the Daily News are concerned, is it your understanding that their priority is based entirely on the length of time they have worked for the News? A. Yes, sir.

Q. That is to say, if a man worked at another newspaper and then came to work at the News, his priority would date from the time he was first employed at the News; is that correct? A. Yes, sir.

Q. So that when you talked of industry-wide seniority, you didn't mean that a man can carry with him a priority acquired at another paper to another enterprise? A. No, sir.

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Q. Have there been times that you have been at the News that there has been any question of arbitration or settling of grievances involving the original priority date of a situation holder or a regular substitute? A. I don't recall a dispute ever getting to the point of grievance, at least since I have been there, although questions have come up from time to time; but they have been resolved at the local level insofar as questions have come up concerning someone's original date at the News.

Q. In short, this, I take it, is not a matter that is subject to very much argument? A. No, sir.

Q. There was reference in the questions asked you by Mr. Richman to the fact that there is a rule that regular substitutes who have not had five days work at another newspaper would have a certain priority in employment at the News; is that correct? A. Yes, sir.

Q. Is it the rule in the industry that if a man has worked five days at one newspaper, and worked a sixth day at another, that he must be paid overtime for that sixth day? A. At the other paper?

Q. Yes. A. No.

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Q. That would be straight time? A. Straight time, yes, sir.

Q. Any such man who had worked only four days at one newspaper would, of course, work straight time if he went to another paper? A. Yes, sir.

* * *

Q. No, that wasn't quite what I was asking about.

You testified that regular situation holders and regular substitutes on one newspaper who had worked only four days had a certain preference if they moved over to another newspaper in order to work their fifth day? A. Yes, sir.

Q. Is that preference accorded only to men who are regular situation holders or regular substitutes on a newspaper? A. I believe so.

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Q. I just want to make sure the record is clear on that.

You testified about this meeting at which Mr. Smollon

described the practices that had been in effect with respect to the order of priority and hiring.

To your knowledge, was Mr. Smollon's description an accurate one of the practice that had been followed in the past? A. Yes, sir.

Q. Was it one with which the publishers disagreed in any respect? A. No, sir.

Q. Did this order of priority in hiring have any relationship to membership or non-membership in any labor organization? A. No, sir.

Trial Examiner: Do you have any qualifications or any explanations?

The Witness: Secondarily, it might in the sense that—at least to my understanding—regular situation holders are union members, and regular extras generally speaking do have cards.

But from our point of view, giving priority to regular situation holders elsewhere and regular subs elsewhere is a good practice. So the fact of whether they have a union card or not is not our primary concern.

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There is a relationship, but from our point of view it is the experience in the industry that makes it a favorable practice.

Q. (By Mr. Van Arkel) That is to say, a person who is a regular situation holder or a regular substitute of another paper would be a competent man, qualified to perform the work in the mailing room? Is that what you intended to say? A. Yes, sir.

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Q. (By Mr. Van Arkel) As a matter of practice, Mr. Mortimer, has it been your observation that regular situation holders, if given the opportunity, do become members of New York Mailers' Union No. 6? A. Yes, sir.

Q. Would the same extend to regular substitutes?

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A. Yes, sir.

Q. Do you know whether or not Mailers' Union No. 6 admits to membership persons who are in the class that we have here described as extras? A. Yes.

I am sorry; we have used the word "extra" in too many ways. Will you define this particular use of the word, please?

Q. By "extras," I meant those men who show up intermittently and casually for work, instead of showing up regularly. A. To my knowledge, that is not the practice of the Mailers' Union to do so.

* * *

RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) * * *

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Q. Does the Daily News consider a man who is coming from another shop, after holding a regular situation there, coming to the News to work for the first time, more competent than an extra who is on this list of extras that we spoke about, who has worked at the Daily News for one or more years?

* * *

A. I can only speak for myself.

Generally speaking—and there are always exceptions, I presume,—I would think a regular situation holder from

another paper would generally, on the average, be more competent than a man who has worked as a sub.

Q. Even if this man coming from another paper has never worked at the Daily News before?

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A. That is my own personal opinion, generally speaking.

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WILLIS ROTENBERG, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified

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as follows:

Direct Examination:

Q. (By Mr. Richman) • • •

Q. What is your position with the New York Daily News? A. Superintendent of the mail room.

Q. Are you a member in good standing of the Mailers' Union Local No. 6? A. Yes, sir.

Q. As a member, are you familiar with the constitution and by-laws of Local 6? A. Not altogether, sir. We have other proclivities.

Q. You are familiar with them to a certain extent? A. Yes, sir.

Q. To the extent that you are familiar with them, do you attempt to abide by them? A. Yes, sir.

Q. Are you familiar with the constitution, by-laws and general laws of the International Typographical Union? A. No, sir, not too much.

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Q. Have you read through them? A. I have, but it's been some time ago.

Q. To the extent that you are familiar with them, do you abide by them? A. I abide by them, and anything that I am not sure of, I have a book at the office and I look into it.

Q. Which book do you have? A. The I. T. U. by-laws.

Q. You are talking about the book of laws of the I. T. U. that is issued every year; is that right? A. Yes, sir.

Q. You say you do refer to them whenever you have a question? A. Whenever I have occasion to, and whenever an argument is raised.

Q. Do you also refer to the constitution and by-laws of the local in the same manner? A. Well, we don't have much occasion to refer to them, sir.

Q. When you refer to the book of laws, do you refer to the general laws section primarily? A. Well, naturally, we would. We get the by-laws and the new contracts.

Q. Do you also refer to other parts of the book of laws of the I. T. U.?

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A. When the occasion arises, yes, sir.

Q. What are your duties, please? A. My duties?

Q. Yes, generally. A. Well, to order people around, boss them around, listen to them curse me, and I read their lips.

Q. Specifically, Mr. Rotenberg, who is in charge of the operation of the mail room at the Daily News? A. Who is in charge?

Q. Yes. A. I am.

Q. Are you in charge of the Brooklyn mail room also? A. Yes, sir.

Q. To whom do you report? A. To Mr. Joseph Schiffman. He is the city circulation manager; and Mr. William Wekowitz, he is the circulation manager.

Q. Do you supervise any foremen? A. Yes.

Q. How many? A. I have five in New York and four in Brooklyn.

Q. When are your off-nights, usually? A. Sunday and Monday.

Q. Was that true in 1956, Mr. Rotenberg? A. Sir?

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Q. Was that true in 1956? A. Yes, sir.

Q. That is true in 1957, I take it? A. Yes, sir.

Q. When you are not off, do you do the hiring at the shape every night? A. When I am not off? When I am there, yes, sir.

* * *

Q. What is the order of hiring at the mail room of the Daily News? A. Well, we have a list which you have in front of you on the table there. Those substitutes, they go to work in that order.

Q. You are talking about General Counsel's Exhibit 6; is that right? A. The third column over, that is the substitutes with cards.

Q. Before the substitutes, what happens to the regular situation men? A. They go to work regularly. They know when they have to go to work.

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Q. They don't go through any hiring procedure? A. No, sir, because they have certain nights off and they have a certain time that they have to report on different nights.

Q. Then the first men you actually hire as such are the people in the substitute column; is that right? A. Yes, sir.

Q. Incidentally, with respect to this exhibit—

Trial Examiner: Show him the exhibit, please.

Mr. Richman: Yes, sir.

The Witness: I see many of them, Judge.

Q. (By Mr. Richman) Take a look carefully at this exhibit, please.

When did that go into effect, the approximate date? A. You mean this whole line here on the right?

Q. The whole exhibit. A. The regular situation holders?

Q. Yes. A. Some of them have been working there for fifteen or twenty years.

Q. In other words, the regular situation holders have been unchanged for the past few years; is that correct? A. Yes; but outside of a man retiring, or, may the good Lord help him, a man passes away, or something like that, one of the subs moves up.

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Q. With respect to the substitute column, when did that particular listing go into effect? A. You mean this entire column?

Q. Yes. A. That went into effect Sunday night, June 10th, 1956.

Trial Examiner: That is the third column?

The Witness: From here down; from Mareseo down. Those are the new members that were taken in beginning June 10th.

Trial Examiner: Beginning with the name Maresco?

The Witness: Yes. The others had been taken in three or four years ago.

Q. (By Mr. Richman) After you hire the regular

substitutes in that order, who do you put on next? A. The extras, or casuals, or the men without cards.

Q. Are there men without cards who are not regular substitutes? A. If they come in from outside shops and they have cards, they go to work ahead of the men without cards.

Q. The men without cards are these extras that you call? A. Extras.

Q. Do you have a list for the extras? A. Yes, sir.

Q. Do you have it with you? A. It is a terrible looking list.

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Q. When was this list in effect, the list that you are referring to now? A. Parts of this list was in effect before I had this job as superintendent. It started with a fellow named Harry Cousens; he was in charge.

Q. When did you become superintendent? A. In 1952.

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Q. This list that you took out of your pocket is the list that you are currently following; is that correct? A. That's right.

Q. Before June 10th, 1956, you had on the list the names appearing on General Counsel's Exhibit 6 beginning with Maresco and going down to Haynia; is that correct? A. Yes, sir.

Q. That is in the third column on the right of this exhibit? A. Yes, sir.

Q. Those names on General Counsel's Exhibit 6, with the exception of Maresco, followed Randall on your extra list, is that not so? A. Yes, the names on that list.

Q. On the subject of the order of hiring, I believe you

said that first the regular substitutes, and then card men from outside shops, is that correct, who appear at the shape? A. Yes,

Q. And then the extras are hired? A. Yes.

Q. Was this list, General Counsel's Exhibit 6, put up on the bulletin board at the Daily News? A. Was it put on?

Q. Yes. Was it posted on the bulletin board? A. It had been posted after we put all these names here.

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Q. Who had that list printed up? A. Who had it printed up? I had it printed up.

Q. Where did you get the names which were added, those thirty-one names? A. I had them on a list like this and we all knew about the members that were going to be taken into the union. They were given cards, and naturally we had those names.

Q. Did you receive a list for printing from Mr. Cornish, the chapel chairman? A. Did I receive a list from Mr. Cornish?

Q. Yes. A. He gave me a list of the names, but I knew because I had been down to the meeting when they were taken in.

Q. But he gave you the list; is that correct? A. That is part of his duty. He is a representative of the union, and that is part of his duty. He does things like that.

* * *

Q. (By Mr. Richman) You say that is part of his duty, to give you this list? A. Yes.

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Q. Is it part of the duty, as you understand it, of the chapel chairman to advise you of any changes in the

priority? A. What do you mean, advise me of any changes? Names being taken off?

Q. Names added, or names being taken off for one reason or another. A. If there are any names to be added or to be taken off, I would hear from the union also, and he might come up and talk about it.

Q. Does he come up and tell you about it? A. He might at times for different things.

Q. Do you have anything to do with the keeping of this list, with the entry of the names on the list? A. Well, we enter them in our payroll book after they are put to work, if that is what you mean.

Q. Do you have anything to do with the getting on to the list? A. You mean—

Q. With a man's getting onto that list? A. Names getting on the list?

Q. Yes. A. In a way I have, because I have the list made up in the composing room. I send it upstairs and if there are any extra names we just write them or print them with a pencil.

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Q. Where do you get that list that the composing room makes up? A. From the union, and, as I said, the chairman will come up and talk about it.

* * *

Q. To your knowledge, does the chapel chairman keep a list of his own which is identical to this priority list? A. Well, he may have a copy of this in his locker.

Q. Do you know whether he does? A. Well, I imagine he does.

Q. Do you know for a fact whether he does? A. When he goes around and collects dues, or when they

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have an election, they mark the names off that they voted or collected dues from them.

Q. The names on this list are only the names of members of the union; is that right? A. Yes, sir.

Q. No non-union man would get on that list? A. No, sir.

Trial Examiner: You are still referring to General Counsel's Exhibit 6?

Mr. Richman: Yes.

The Witness: Until he received a card, naturally.

Q. (By Mr. Richman) When a man receives a card, he can get on that list; is that correct? A. Yes. Maybe sixty or seventy have gotten their names on here in the last six or seven years.

Q. This is the list that you follow in the hiring? A. Yes, sir.

Q. With respect to Mr. Randall, you know he works at the Daily News; is that correct? A. I believe I do, yes, sir. I kind of remember him, I guess.

Q. He works there now regularly every Friday and Saturday? A. Well, he didn't in October. He took off for Yom Kippur.

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Q. Well— A. That was still taking off.

Q. All right. I understand the paper has to go out even on Yom Kippur. A. Even if I am not there, it goes out. As long as Louis Freda comes in, that is all they need.

Q. Before June 10th—that was the day when cards were given out; is that correct? A. Yes, sir.

Q. What was Mr. Randall's position on this extra list? A. Number three.

Q. And that was number three for Friday and Saturday? A. Well, that seemed to be the only two nights I remember him coming around.

Q. Wasn't it in fact number three for other days in the week, too? A. He very rarely came around other days.

Q. When he did come around, it was number three; is that correct? A. Yes, sir. He was shown the same courtesy.

Trial Examiner: That was June 10th, 1956?

Mr. Richman: Yes, sir.

Q. (By Mr. Richman) After June 10th, 1956, what was Mr. Randall's position on the list? A. On the extra list?

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Q. Yes. A. He was number two for a while, and then the number one man, Murray Cohen, he had to stop coming around on account of his doctor's orders, so Randall became number one on the extra list.

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Q. (By Mr. Richman) But hiring as of a day after June 10th, let's say on June 11th, was on the basis of this list, General Counsel's Exhibit 6? A. Yes. The men had received their cards.

Q. You stated that you attended this union meeting at which these cards were given out? A. Yes, sir.

Q. And therefore you knew that these thirty-one cards were being given out to these new members; is that correct? A. Yes, sir.

Q. Thereafter, you received a priority list revised to show these thirty-one names in the regular substitute's

group? A. I didn't receive any priority list. I knew their names, and when I was able to get a list made up—this list is made up in the composing room for me. Then I just added those things on to the other list that we had.

Q. Did Mr. Cornish give you a revised list to have printed up? A. Mr. Cornish didn't have to give me any revised list. I told you I had them because I had gotten them from the union and I had gotten them that Sunday when I was down to the meeting, so I knew the names of the men.

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Q. In fact, did he give you a list? A. No; because even if he handed me a list, I had the names anyhow.

Q. I would like to refresh your recollection on this last matter, Mr. Rotenberg, by showing this paper to you and having you read it.

(Witness examines document.)

Q. Does that refresh your memory as to what happened? A. Even if Cornish gave me a list, I still had the names.

Q. Did Mr. Cornish give you— A. I didn't have to depend on George Cornish for the list.

Trial Examiner: The question is whether he gave you such a list.

The Witness: Maybe he did. This is a year and-a-half ago. He might have laid the list on my desk, you understand.

Q. (By Mr. Richman) Did he do that, as you remember now? Did he lay a list on your desk?

Can you answer that yes or no? A. Well, I just can't remember, but evidently he must have. I told you I had these names already.

Q. I know you had them; but did he give you such a list? A. What difference did that make if Cornish gave me a

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list?

Q. (By Mr. Richman) Mr. Rotenberg, in fact did Mr. Cornish lay such a list on your desk? A. I will say he laid it, but I still had the names.

Q. I know you had the names.

What did you do with the list he laid on your desk? A. I copied them on to this thing, if he laid it on my desk.

Q. Did you give that list that you revised to the composing room to be made up? A. Yes.

Q. Is General Counsel's Exhibit 6 the result of the work of the composing room?

Is that list you have in front of you the result of the composing room? A. Yes.

Q. After June 10th, 1956, was Mr. Randall hired before or after the last thirty names on that list, General Counsel's Exhibit 6, the last thirty names on the right-hand column? A. If these men came in, he was hired after them.

Q. Do you remember whether, in fact, he was hired? A. He was hired because they don't all come in the one night.

Q. If all thirty came in the one night, all thirty

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would go ahead of Mr. Randall; is that right? A. Yes, sir.

Q. But you say usually not all thirty come in? A. They are subs, you understand. A sub has the right to come around any night he wants, or he can go look for work any day he wants at any paper.

Q. Do the subs have to come around a certain minimum of nights in a week? A. They are supposed to try to make five nights at the News.

Q. Do they, in fact, do that? A. A lot of them come around, and sometimes they don't get five nights. If we have what we call a small paper, then we don't use as many men. Some weeks, we will say like after the Christmas holidays, or some time during the summer, the paper is a little smaller than usual, and sometimes they don't get five and they might have to go someplace else to look for a night's work.

Q. Mr. Rotenberg, with respect to the issuance of these thirty-one cards, did you make any recommendations to the union that thirty-one cards be issued, you personally? A. No, sir.

Q. Is it a fact, Mr. Rotenberg, that once the union issued the cards to these thirty-one men; the management of the News was required to put those thirty-one names on the

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regular substitute list? A. The management was required?

I told you I had those names put on the list.

Q. Were you required to put them on the regular substitute list? A. I had to. How am I going to see which man is going to work first?

Q. You understand that a man who has a card will be a regular substitute; is that correct? A. Yes. The men

that were taken in from the Daily News, they were supposed to have their cards in the Daily News.

* * *

Q. (By Mr. Richman) I refer you to Article 4 of the by-laws of General Counsel's Exhibit 5.

Is that the article to which you look for answers to questions on the operation of the priority system?

* * *

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A. Yes, sir.

* * *

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Q. Before that Sunday night, a day or two before, did you have a talk with Mr. Smollon about Randall? A. Yes, sir.

Q. What did Mr. Smollon tell you? A. Well, we had a talk, and we thought that—

Q. What did Mr. Smollon tell you? A. You want the conversation, or do you just want what he told me?

Q. Let's have the whole conversation. A. The whole conversation.

We were talking in general, and we both thought that it wouldn't be practical to let him come in and work whenever he wanted to.

Q. You say you both thought that? A. That was in our general talk.

* * *

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Q. What did he say to you? A. He said several things to me.

Q. Tell me what they are. A. He told me he didn't think that Randall should go to work outside of Friday

or Saturday, and I thought the same thing. He said he was to be put on last.

Q. Did you agree? A. I agreed, yes, sir.

Q. Two days later did you speak to Randall, on a Sunday night? A. Yes.

Q. What did you tell Randall? A. I told him that he had to wait, that he would be the last man put on, that he was only shaping Friday and Saturday nights.

Q. Did you tell him who told you to— A. I told him that I was talking with the union—Smollon, the union official, and we talked it over.

Q. And that what? A. That we didn't think he should go to work ahead of anybody else, any of the extras.

Q. Did you use the word "we," or that Mr. Smollon said that? A. We, I said.

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Q. You said to him, "We didn't think"? A. Yes.

Q. After that, as far as you were concerned, Mr. Randall would be put on last on any night other than Friday or Saturday; is that correct? A. He never come around any other night. I just told him that he couldn't go to work that night, that his shaping nights were Friday and Saturday.

Q. What about other nights? A. I didn't mention other nights to him, no, sir.

Q. You just told him that he couldn't go to work on that night? A. That night, yes. He would have to wait for the last man, and he didn't wait.

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Q. (By Mr. Richman) Did you tell him anything about any other night but Friday or Saturday nights? Did you

say anything to him about that? A. I told him he shapes only Friday or Saturday nights, and that that Sunday night he would have to go to work last.

Q. What about other nights? A. I don't remember telling him about other nights.

Q. Mr. Rotenberg, is this your signature (handing document to the witness)? A. That is my signature, yes, sir.

Q. You signed your signature after Mr. Kull asked you whether the information in here was true to the best of your knowledge? A. I don't remember telling Kull this, where Kull says here, "I don't know where Smollon gets the authority to tell me when to put Randall on." I don't remember telling that to Kull.

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Q. Are these your initials right next to that? A. That is all right, but it still can be that you don't read a page.

Q. Did you put your initials on this page? A. That is my initial, yes.

Q. That is your signature here? A. Yes.

Mr. Richman: I would like to have this marked for identification as General Counsel's Exhibit 7.

(Thereupon, the document above referred to was marked as General Counsel's Exhibit No. 7 for identification.)

Mr. Richman: I would like to offer it in evidence as the admission of an agent of the respondent.

Mr. Van Arkel: Which respondent?

Mr. Richman: Respondent Daily News.

Mr. Carter: May we have a *voir dire* examination before it is received?

Trial Examiner: Yes.

Mr. Carter: What were the circumstances under which you signed that?

The Witness: Well, two days after this happened—this was on a Sunday. Tuesday morning I was awakened

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about ten o'clock in the morning. When I get outside, this Kull was there.

I said, "What are you doing up here? You have a lot of nerve, haven't you, waking people up."

He said, "Well, I was in the neighborhood."

Ten miles he traveled to be in the neighborhood. His office is down here and I live at 163rd Street and Prospect Avenue in the Bronx.

Trial Examiner: Just tell us the circumstances under which this document was signed.

The Witness: So he sat there—

Mr. Carter: Did you invite him in?

The Witness: What am I going to do? He is already in the hall. What else could I do? I even invited him to have a little breakfast. So I am half asleep anyhow, just getting up, and he is writing this and reading it to me, and he said, "Here, sign it." Maybe I didn't read it thoroughly.

Mr. Carter: Did he have a good breakfast?

The Witness: He had peaches and cream, the first peaches and cream he ever saw in his life in the morning.

Trial Examiner: Did you look the document over before you signed it?

The Witness: Maybe I didn't look it over thoroughly, your Honor, you know, like you do sometimes. You go buy

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a piece of furniture or something, read this, read what you sign, and a lot of people don't. They are at fault for not reading it carefully.

Trial Examiner: Are you now denying that you told him the statements in there?

The Witness: I was talking to Mr. Smollon; I told him that, and we didn't think he should be working any night.

Trial Examiner: Will you let the witness see that, please?

What statements do you claim you didn't tell Mr. Kull?

Mr. Carter: I think, Mr. Examiner, in all fairness, you should tell him to distinguish his statements and whatever comments may be in there. Obviously, that was written by the investigator.

Trial Examiner: What is in General Counsel's Exhibit 7 which you claim you did not state to the examiner?

The Witness: This is over a year ago.

Trial Examiner: Read it.

The Witness: I know I certainly wouldn't have shown Mr. Smollon the disrespect to say "Where has Smollon got the authority to tell me what to do." I certainly wouldn't have spoken about him with that disrespect.

Trial Examiner: Is there anything else there?

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The Witness: I know that—

Mr. Carter: Try and distinguish in answering the Examiner, Will, between fact statements that that

exhibit contains and comments, if you know what that means.

The Witness: Sir?

Trial Examiner: In connection with your conversation with Mr. Randall or Mr. Smollon, is there anything in this document which you claim you did not state to the examiner taking the document at the time?

The Witness: One is about the disrespect to Mr. Smollon. I certainly would never have said that, where does he get the authority.

Trial Examiner: Is there anything else?

(Witness examines document.)

Trial Examiner: Is that all?

The Witness: I guess so?

Trial Examiner: Do you have any further questions in connection with this before I rule?

Mr. Carter: Did you write any of that material that is on that exhibit?

The Witness: Outside of my initials and my name, that's all.

Mr. Carter: Are any of the nouns or adjectives or adverbs words of your using?

The Witness: No, sir. This Kull was doing all the

talking, and he was writing.

Mr. Carter: Did he do all the writing and all the talking?

The Witness: Yes, sir.

Mr. Carter: Did you talk at all?

The Witness: Well, he asked me different questions, and then I would talk. But he wrote that and

he wrote all the others when he came to the News one Friday night.

Mr. Sugarman: I would like to ask some questions, if I may.

Trial Examiner: All right.

Mr. Sugarman: Was this statement written up by Mr. Kull for your signature after your conversation, but while you were together, or was it written up piece by piece while you were conversing?

The Witness: This was written up in my apartment while we were talking. That was on a Tuesday morning. That was two nights after this Sunday night incident happened.

Mr. Sugarman: Did you read over his shoulder while he was writing, or did he read it back to you?

The Witness: He was sitting there and we were having a little breakfast. Maybe I didn't read it too thoroughly, you see.

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Mr. Sugarman: Did you read it at all?

The Witness: He said, "Here, read it and sign your name." Now, I don't remember whether I read the whole thing or not thoroughly. If I had, I certainly would have noticed about the disrespect for Mr. Smollon. That I would have noticed right away. I certainly would never have said anything like that.

Mr. Sugarman: Had you met Mr. Kull before this date?

The Witness: He had come to the News on a Friday night.

Mr. Sugarman: Was that the previous Friday night, July 20th?

The Witness: No; it was a little earlier than that.

Mr. Sugarman: When he came to the door, you knew him already?

The Witness: Yes, I knew him, because he came to the News and he spent about two hours with me one Friday night there.

Mr. Sugarman: Did he tell you at once when he came to your home what he was there for?

The Witness: Did he tell me?

Mr. Sugarman: Did he tell you right away what he was there for, or did he just say, "I was just dropping by"?

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The Witness: He said, "Why didn't you leave Randall work Sunday night?"

Mr. Sugarman: Did he say anything else to you?

The Witness: Not too much, just talking, and we had a little breakfast there. It wasn't too much about the case.

Mr. Sugarman: Do you remember whether he told you anything about why you should have let him work that night?

Mr. Richman: Objection. I don't see how this is proper *voir dire*.

The Witness: I remember that now.

Mr. Sugarman: What was that?

The Witness: He said that he wants to come down and get three nights a week so he can get a card.

Mr. Sugarman: Kull told you that?

The Witness: Mr. Kull, yes.

Mr. Sugarman: He didn't put that in the statement, did he?

The Witness: No. He only put in there what he wanted to put in.

Trial Examiner: Any further questions?

Mr. Sugarman: No, sir.

Trial Examiner: Do you object to the document?

Mr. Sugarman: Yes.

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Trial Examiner: I will overrule the objections and receive the document in evidence as General Counsel's Exhibit 7.

(Thereupon, the document previously marked for identification as General Counsel's Exhibit No. 7, was received in evidence.)

Mr. Sugarman: May I ask the purpose of the offer?

Trial Examiner: It is for the purpose for which it has been offered.

Mr. Sugarman: The purpose hasn't been stated.

Mr. Richman: As the admission of an agent of the Daily News, as I stated before.

Mr. Sugarman: If it is offered for the purpose of contradicting any testimony the witness has given here today, that is one thing.

Trial Examiner: It is not offered for that purpose.

Mr. Sugarman: It is offered for the truth of the statements, I take it, then.

Trial Examiner: That is what it has been offered for.

Mr. Sugarman: On what basis, may I ask?

Trial Examiner: As stated by counsel, as an admission by an agent of the respondent News Company.

Mr. Sugarman: The witness is under the subpoena of

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the General Counsel and his testimony is tendered here by Mr. Richman.

I don't think he has laid the groundwork for impeachment of the witness by this so-called admission.

Mr. Richman: I don't seek to impeach him.

Trial Examiner: Let's not have any more argument. You have stated your position and I will overrule your objection.

Mr. Sugarman: Very well.

Q. (By Mr. Richman) Mr. Rotenberg, just one or two more questions:

On that Sunday night when you had this conversation with Mr. Randall, this conversation took place about 8:30, you said? A. That is what it says here. It was after I put the other men to work. It must have been after eight o'clock because they go to work about ten minutes of seven. The presses are supposed to run at 7:05, and sometimes they are a little bit later and then we have some early trains to try to make, and after they are made I go in and put what we call a late crew that we need.

Q. After Mr. Randall spoke with you, or you spoke with Mr. Randall, did he stay around the mail room? A. I don't remember. He did say to me, "Why didn't you tell me earlier?" I can't remember now whether he would have

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worked if he had stayed there. I can't remember whether we had enough men to cover all our jobs.

Q. In any event, he wasn't hired that night? A. No, sir.

* * *

Mr. Carter: I have no questions. This man has been up all night and he works nights.

* * *

CROSS EXAMINATION:

Q. (By Mr. Sugarman) * * *

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Q. Is there anything in the constitution of the local or in the I. T. U. laws with which you are acquainted requiring

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you to set up a priority system for extras other than regular situation holders and substitutes? A. I don't remember reading about the extras.

Q. You nevertheless do have a priority list for the extras, don't you? A. Yes. That was started by my predecessor, you see. I just carried that right on.

Q. Who told him to set up such a system, do you know, for the extras? A. I don't know. I was an assistant foreman there and this man was the superintendent of the mail room.

Q. You don't know who may have told him? No one ever told you to carry it on; is that right? A. No. A couple of times Mr. Mortimer spoke with me, and Welkowitz—they said, "You work it right down the line because we don't want any trouble."

That list that Harry Cousens left when he took over another position, that is the list I have in my pocket now with a lot of extra names added to it that have been put to work here since.

Q. Does the union have anything at all to do with that list of extras, or is that just your own private list for the hiring of men? A. That is my own private list.

Q. On that Friday evening of July 20th, 1956, when you

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said you had a conversation with Mr. Smollon regarding Randall, do you recall where that conversation took place? A. It was out on the mail room floor.

Q. Did you come to him or did he come to you? A. He had been around. He had been around talking to the chairman and to different men, you know, and I just saw him there.

Q. Who first raised the question concerning Randall? A. Well, I spoke to him and I told him that Randall had went to work the Sunday night before. He had been put on, I said, but I wasn't working that night. Then we got talking about it.

Q. What did he say to you? A. We both agreed, and the wind-up was that the man had only been shaping Friday and Saturday, and that should be the only two nights, and he should really be ineligible to be put on other nights.

Q. That was the way you felt your own extra list should be administered? A. Yes.

Q. And was it administered that way? A. That is the way it was, and then that following Sunday I had to come in, as I said, on account of the illness of one of my men. Sunday night is one of my regular nights off.

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Q. You and I have met once before, have we? A. Yes.

Q. That was in connection with my examining you in some other proceeding? A. Yes, sir.

Q. Did I ever talk to you about this case? A. No, sir.

Q. Did any official of the union discuss with you the testimony you were going to give here today? A. No, sir.

* * *

Q. (By Mr. Van Arkel) Mr. Rotenberg, before June 10th, 1956, did you learn that there had been an agreement reached between the News and the Mailers' Union No. 6 that thirty-one additional regular substitutes would be taken on?

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The Witness: There was talk about it, yes. You could hear the talk you know.

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Q. (By Mr. Van Arkel) Had you learned that the management of the News had agreed that they would create additional numbers of regular substitute positions? A. Mr. Welkowitz had told me that the Mailers' Union was going to take in some new members.

Q. Had you also heard that the paper was going to take on an additional number of substitutes? A. They would have been substitutes, you see. These men that got the cards would have become substitutes. They wouldn't have gotten regular jobs.

Q. But they couldn't have become members of the union if they couldn't be hired as substitutes, could they? A. No. You see why we have this substitute here on this third line—all these substitutes have cards (indicating document).

Whether you call a man without a card an extra or a substitute, I wouldn't know what you call him.

Q. Let me put it this way, Mr. Rotenberg:

Is it not the management that decides how many substitutes are going to be made? A. The management may have a consultation with the

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officials of the union.

Q. The union just can't vote that a man becomes a substitute, can it? A. No. They decide upon the number of men that are going to be taken in from each shop.

Q. But before that, the company has to decide how many substitutes they are going to have, doesn't it? A. I imagine the union proposes a figure to them.

Q. And the company has to agree to it? A. Yes.

Q. Then, once the company has agreed to create additional substitute jobs, then the question arises whether or not the union will take an additional number of men into membership; is that correct? A. Yes, sir.

Q. Any person can retire from his job in the mail room any time he wants, can he? A. Yes, sir.

Q. He can quit? A. Yes, sir.

Q. He doesn't have to go to the union to do that? A. No, he doesn't have to go to the union.

Q. Unless he wants his pension benefits? A. If he wants to retire, we will say, at an age of sixty-five, then he has to make application to the union,

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and, as I said before, I think they have to send you to the I. T. U. They have to go through a regular routine.

Q. But if he wants to quit? A. If he wants to quit, he just quits.

Mr. Sugarman: May I have my tag line? I always have one I forgot to ask.

Trial Examiner: Yes.

Q. (By Mr. Sugarman) Mr. Rotenberg, has the union ever disciplined you or threatened to discipline you as superintendent or foreman for carrying out any instructions of the publisher? A. No.

Q. Has it ever pressured you or have any of its officers or any agents of the union ever pressured you to do some-

thing as superintendent or foreman contrary to your instructions from the management? A. No, sir. You see, I couldn't very well do that anyhow, because when you take a job as a foreman or a superintendent, you are under what we call management.

I know the management of the Daily News has always been fair with the Mailers' Union, so we have never had any arguments or words.

Mr. Sugarman: That is all.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) Isn't it a fact, Mr. Rotenberg, that when the union issues its cards to the men, that you put those men on the list as regular substitutes? A. Yes; on this third column.

Q. That is without any prior discussion between you and the union? A. Yes.

Q. That is automatic; is that right? A. Yes.

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RE-CROSS EXAMINATION:

Q. (By Mr. Van Arkel) You have testified, Mr. Rotenberg, haven't you, that prior to June 10th, 1956, the management had agreed with the union that a certain additional number of regular substitutes could be taken on; is that right? A. Yes.

Q. And it was after that that these men were taken into the union; is that correct? A. Yes, sir.

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Stenographic Transcript of Testimony at Hearing of November 14, 1957.

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PROCEEDINGS

Trial Examiner Libbin: Come to order.

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WILLIAM E. SMOLLON, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) • • •

Q. Are you an official of New York Mailers' Union No. 6? A. President.

Q. • • •

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First of all, you say there is a priority list in each of these mail rooms; is that correct, for your members? A. Yes.

Q. Is it a fact that the chapel chairman in each of these mail rooms keeps that priority list? A. The chapel chairman has that priority list. The union has a copy of that priority list, and the foreman has a copy of that priority list.

Q. Isn't it a fact that the initial responsibility for keeping that list is the chapel chairman's? A. No.

Q. Whose is it? A. It can be the foreman. The foreman keeps the priority list. He makes it up.

Q. I don't want anything about "it can be."

Who is responsible for keeping it initially?

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A. The foreman keeps the priority list and hires from that list.

Q. He hires from the list? A. Yes, sir.

Q. So your answer is that the chapel chairman does not have the initial responsibility of keeping that list, am I

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correct? A. That's right.

Q. You are familia , I take it, with the provisions of your constitution, your local constitution? A. Well, I think I am.

Q. I would like to refer you to Article 15 of the constitution, Section 17, of General Counsel's Exhibit 5.

Would you read that and tell me whether your answer to my last question shouldn't be any different?

Mr. Carter: I object to the form of that question.

Trial Examiner: Read it first, and then ask him another question.

(Witness examines document.)

The Witness: What was your question?

Q. (By Mr. Richman) Isn't it a fact that it is the responsibility of the chapel chairman to keep that priority list? A. As far as the union is concerned, it is the responsibility of the chapel chairman.

Q. Isn't it a fact that he is the first one, or the initial

person, to make up that list? A. No, it is not. He doesn't make up the list; his foreman makes the list up.

Q. The foreman makes up the priority list? A. He makes the priority list up and gets it printed in

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the composing room.

Q. Are you talking about the physical list? A. I am talking about the list that is posted under that law that you showed me.

Q. Let me address this question to you:

In having this priority list printed up, doesn't the foreman get the information for that list from the chapel chairman? A. The foreman, as he puts his men to work, he gets that list. He knows those men going to work, and that is where he promulgates the list from.

Q. My question again is this:

Isn't it a fact that the foreman gets the information which he has printed up to make up this priority list from the chapel chairman initially? A. The chapel chairman could give the foreman the names of men depositing their cards in the shop.

Q. When you say "could," do you—

Mr. Carter: Let him finish.

The Witness: It is not at all necessary that he give it to him. The foreman knows himself what makes up the list. He could give it to him, that is true.

Q. (By Mr. Richman) When you say "could," in fact at the Wall Street Journal doesn't the chapel chairman give the foreman the names of the men on the priority list?

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A. That I wouldn't know.

Q. You wouldn't know that? A. No.

Q. What about the Daily News? Isn't it a fact that the chapel chairman gives to the foreman the names of the men and their order for printing up on this priority list? A. That I wouldn't know.

Q. You wouldn't know that either? A. No, I wouldn't.

Q. When you say the chapel chairman could—you say that he could give the foreman these names? A. Yes.

Q. These names are based upon what?

Let me withdraw that.

Isn't it a fact that the chapel chairman assembles a priority list from the cards of the men which were deposited with him?

Mr. Carter: I would suggest that the priority list encompassing the question be identified. What priority list?

Trial Examiner: I take it he is referring to the priority list which the witness has testified that he knows about.

That is the one for your members?

The Witness: Yes,

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Mr. Richman: That is correct.

The Witness: Again I am lost with your question.

Q. (By Mr. Richman) Isn't it the fact that the chapel chairman makes up a priority list for members from the cards which were deposited with him by these members? A. The chapel chairman, after the foreman makes up the priority list and has it printed, he would check it to see if that coincided with the cards deposited in his shop.

Q. You say he only checks it? A. He checks it to make sure it is right.

Trial Examiner: Does the chapel chairman have access to the cards that are deposited in the shop?

The Witness: The chapel chairman holds the cards that are deposited.

Q. (By Mr. Richman) These cards are physically deposited with him? A. With the chapel chairman.

Q. Doesn't the chapel chairman also note the date on which these cards are deposited with him? A. I think he would, but I couldn't swear that he does. I would think he would.

Q. What makes you say you would think he does? A. Well, that is—

Q. Isn't he required to? A. Well, I would say yes, he should keep it.

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Q. He is required to, isn't he, Mr. Smollon? A. I don't say he is required to.

Q. You say he should? A. He should.

Q. You would strongly advise him to do that? A. Of course.

Q. Isn't it a fact that the priority standing of the men date from the time they deposit the cards with the chapel chairman? A. Yes.

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Q. Let's go a little further:

"The chapel chairman gives the list to the foreman and this is the order in which the union men are hired."

Was that correct when you gave that statement to Mr. Kull? A. I would say that in this particular case, as I

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understand it now—I was giving what ordinarily would be the case. In this case here, the foreman makes up the priority list in that shop, not the chairman.

When I gave that statement, that is the way it should be. But in this particular case here, they didn't work it that way.

Trial Examiner: Which case?

The Witness: The News.

Q. (By Mr. Richman) You heard testimony by Mr. Rotenberg yesterday that Mr. Cornish gave him a revised priority list which he had printed.

Is that the procedure to which you refer?

Mr. Van Arkel: That wasn't Mr. Rotenberg's testimony.

A. That wasn't his testimony that I can remember.

Trial Examiner: Is that a fact?

The Witness: I think what happened in this case, if I remember his testimony, was that—

Trial Examiner: Never mind his testimony. What is the true fact?

The Witness: I don't understand the question.

Q. (By Mr. Richman) Isn't it a fact that at the Daily News Mr. Cornish gave Mr. Rotenberg a revised priority list which Mr. Rotenberg had printed in the composing room?

Mr. Van Arkel: What is the point of asking the witness what Mr. Rotenberg testified to?

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Mr. Richman: I am not asking him that.

Mr. Van Arkel: Then you ought to ask him if he knows.

The Witness: Then I should say I don't know.

Q. (By Mr. Richman) With reference to the way it should be, as you said, is there anyone on the priority list who is not a member of the union? A. On a union priority list?

Q. On a priority list; the priority list we are talking about.

I am not talking about any extra list. We are talking about a priority list. A. There is nobody but union men on that priority list.

Q. And that priority list is used by the foreman to hire mailers; is that correct? A. As among union members.

Q. In hiring mailers, he hires first the men on that priority list; is that not so? A. I wouldn't say so.

Q. You wouldn't? A. I wouldn't, no.

Q. You wouldn't know, or you wouldn't say so? A. I wouldn't say so.

Q. I refer you again to this affidavit, where it says: "Hiring is done by the foreman in accordance with

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the list."

That is true in the News? A. That's right.

Q. According to this, when Mr. Rotenberg hires mailers, he hires from that priority list? A. Among union members.

Q. You stress that? A. Yes, I stress that.

Q. This priority list we are talking about contains, in the case of the Daily News, regular situation holders and regular substitutes; is that correct? A. Correct.

Q. And only union men are in those two groups; isn't that so also? A. That is so.

Q. Isn't it a fact that only a union man can be a regular situation holder? A. No.

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Q. Let me ask you again:

Isn't it a fact that only a union man can be a

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regular situation holder on that list? A. When I said "no" on that, I was thinking back on my contract. A man who works five days a week for ten weeks previous can become a regular situation holder. That is why I said "no" on the steady situation holder.

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Q. Do you know of any men who have become regular situation holders as a result of that contract provision you are referring to? A. Any non-union man?

Q. Non-union men. A. No, I don't know of any.

Q. Do you know of any non-union men holding a regular situation at the Daily News? A. No.

Q. Do you know of any non-union men holding a regular situation at the Wall Street Journal? A. No.

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Q. (By Mr. Richman) Do you know any non-union men who hold regular substitute positions at the Daily News?

Mr. Sugarman: May I have a clarification of the question, at your direction, Mr. Examiner?

Does the question ask for the knowledge as to whether or not there are any, or does he ask for—

Trial Examiner: I think the question is clear. He is asking the witness if he knows.

Do you know if there are any substitutes—

Mr. Richman: Any non-union men who hold regular substitute positions at the Daily News.

Trial Examiner: Do you know?

Mr. Van Arkel: I would like my objection recorded to this.

Trial Examiner: You can have a standing objection to this line of questioning which I am overruling.

The Witness: That is a hard question to answer. I

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would have to, I think, be in the News a whole lot more than I am and be looking it over more to know.

Trial Examiner: The question is, do you know?

The Witness: I will say I don't know.

Q. (By Mr. Richman) I show you General Counsel's Exhibit 6. Look at the last column on the right, substitutes.

Are you familiar with the names of your members, Mr. Smollon? A. Yes.

Q. Could you look through this list and tell me if there are any people on that list who are not members of your union? A. There is nobody on this list that is not a member of our union.

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Q. (By Mr. Richman) Mr. Smollon, based upon your familiarity with the operations and the hiring practices at the Daily News and the Wall Street Journal, isn't it a fact that regular situation holders are hired first? A. Regular situation holders?

Q. Yes. A. They just go in and go to work; they have a job.

Q. They don't go through any formal hiring? A. No.

Q. Then, following them, isn't it a fact that regular substitutes are hired after the regular situation holders? A. Regular substitutes?

Q. Yes, after the regular situation holders? A. That is about the way it is done.

Q. And following the regular substitutes, isn't it a fact that other card holders who are not regular situation holders or regular substitutes are hired, any other card holder on the floor? A. You mean experienced men coming from other shops?

Q. I am talking about card holders, Mr. Smollon, not experienced men. A. I believe that has been the practice.

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Q. To hire other card holders? A. I believe that has been the practice. I say men from other shops who have experience.

Q. I am not talking about experience at all, Mr. Smollon. I am talking about men from other shops with cards. A. That has been the practice.

Q. That has been the practice? A. Yes.

Q. And following these men from other shops with cards, at the Daily News, the hiring of non-union extras takes place; is that right? Is that the next in order? A. That is probably the practice.

Q. To your knowledge, is it the practice? A. To my knowledge, it is.

Q. That is all I want, Mr. Smollon. A. That is it.

Q. Isn't that the same practice that is followed at the Wall Street Journal: First regular situation holders—

A. There I am not familiar with it. It is a smaller shop and I am not familiar with it.

Q. You don't get around there as often? A. I very seldom get around there. I very seldom get around in the News, as far as that goes.

Q. Would you have no knowledge at all of the Wall Street Journal practices?

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A. Not as far as that is concerned, no. I don't know too much about that.

Q. Isn't it a fact, Mr. Smollon, that the hiring order that we just went through for the Daily News is the hiring order followed at the papers owned by all other members of the Publishers' Association of New York City? A. I would say that is the general practice.

Q. How long has that practice been in force? A. Well, the first that I ever heard of that being a general practice was at a meeting I believe we held around in 1954, and that had been the practice then.

Q. Had it been the practice in 1954? A. I think that's about it.

Q. Is it the practice today? A. That was the first I heard of that practice.

Q. You didn't know of it prior to 1954? A. I didn't have anything to do with the making of that practice.

Q. I am not saying you did. I want to know whether, prior to 1954, this same practice had been in existence, to your knowledge. A. To my knowledge, no. That was a surprise to me.

Q. Did you know of any different practice that existed prior to 1954? A. Well, we had had a meeting between business

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representative O'Hara and myself, in 1951 I believe it was, with Mr. Mapel, at the Publishers' Association office. We had discussed the hiring of men in the rooms of the Publishers.

Mr. Mapel made up a letter at that time that he sent out to all the Publishers' groups signatories to the contract. In that letter, we outlined about what we thought and what we agreed on should be the hiring practice under the law at that time.

That letter, of course, I can't remember all the details of it now, but that is the letter and that is the way I thought up to 1954 that they were being hired, and this other practice came in.

Q. What was different from what you thought the practice was? A. I will have to look at the letter now. I know there is a letter, and it could be put in evidence here.

Q. Are you familiar with the contents of the general laws of the I. T. U.? A. I have read the general laws of the I. T. U. I only go back to them when I have to go back to them. The general laws are the book of laws of the I. T. U.

Q. You go back to them when the contract is not clear? A. If necessary, if I have to.

Q. My question is: Do you go back to them when the

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contract between the union and the Publishers' Association is not clear on any specific point? A. I would have to go back to them.

Q. You also consult your union constitution, your local union constitution, on matters when the contract is not clear? A. If it were necessary.

Q. Do you, in fact? A. Well, I haven't had the experience of going back to it in all the years that I have been president.

Q. The general laws usually cover the particular point in question? A. I would say in answer to that that we have never had, that I can remember during my term of office, anything that made me go to the general laws or the local laws to interpret anything that we have had with the Publishers' group.

Q. Is it because the practice is so well established that there is no need to do that? A. I would think so.

Q. But if you had to, you would refer to the general laws? A. Of course. The contract calls for that.

Q. Isn't it a fact that there is no industry-wide seniority system in effect between the Publishers' Association and the New York Mailers' Union No. 6?

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A. That is true.

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Q. (By Mr. Richman) Isn't it a fact that at a meeting of your union in March, 1956, a motion was made that applications be given to employees of various newspapers who worked an average of three days a week in the mail room? A. Yes.

Q. Isn't it also a fact that the union checked with the publishers to see how many non-union men met this three-days-a-week average? A. We checked with the publishers, that is true.

Q. And you found that you could only take in about

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seventy-five members; is that right, sir?

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The Witness: All right; seventy-five qualified.

Q. (By Mr. Richman) Under that criteria; is that right? A. Yes.

Mr. Sugarman: Under the criteria of three days a week?

Mr. Richman: Yes.

The Witness: We got about seventy-five, yes.

Q. (By Mr. Richman) However, wasn't it the intention of the union officials to increase the membership by about a total of 125 members?

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A. That's right.

Q. So, therefore, at another meeting, a motion was made and carried, and that motion left the matter of deciding the criteria for admission up to the officers of the union; is that right?

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A. Yes; for them to determine what to do to make the 125 up.

Q. In the case of the Daily News specifically, the officers then decided that those individuals who had earned fifteen vacation days in the years of 1954 and 1955 would be given application cards? A. That's right, they would be given applications.

Q. Randall didn't qualify under this criteria? A. He had twelve vacation days.

Q. And of course vacation credits usually signify the number of days worked? A. Yes.

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Q. (By Mr. Richman) Wasn't the reason that you decided to take in more members the fact that the officials

of the union wanted to have more members in the various shops around the city?

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The Witness: I won't give a yes or no answer.

Trial Examiner: Answer the way you can.

The Witness: I will say that the reason we wanted to take in new members, and the reason we always want to take in new members, is to get steady situation holders working in our shops to cover the work we have for our employers. That is the only reason.

We make the condition of holding employment and holding a job the qualifications for getting a card in our union. We don't make qualifications in our union the reason for holding a job.

That is the answer to it.

Q. (By Mr. Richman) Mr. Smollon, isn't it a fact that in the several years immediately prior to 1956 the requirements of the various newspapers for mailers had increased? A. Yes.

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Q. And when was the time previous to 1946 when you took in new members? A. 1946?

Q. 1956, I am sorry. A. I think 1953, and I think in 1951.

Q. So between 1953 and 1956, more mailers were being used on a steadier basis by the publishers; isn't that correct? A. That is partly correct.

When you say "more being used," yes, that is true; but that isn't the only reason. We were taking in members all during that time, but we weren't taking them in groups

as large as those groups were. We are always taking in members. Our books are never closed to membership; our books are always open.

Now, we took them in in 1953, and I think that was the time before that, and I think we took them in in 1951. Now, since 1946 or 1945, at the end of the war, we have taken in—our membership is practically a two-thirds new membership since the war.

Between eight hundred and nine hundred members out of about thirteen hundred, including pensioners, are new members since the war.

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Q. The increase in your membership parallels the increase in work? A. That's right.

Q. Going back to 1956, when this decision to increase membership was made, isn't it a fact that the Publishers' Association had nothing to do with the decision to increase the membership? A. They have nothing to do with increasing the membership, no. They cooperate with us, though, in giving us the information.

Q. And this idea of increasing the membership, and the method by which the cards would be given out, were solely the union's?

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A. Yes. We have to have some method of doing it.

Q. Finally, Mr. Smollon, on June 10th, thirty-one of the Daily News extras were inducted into membership in the union; is that correct? A. That's right.

Q. Thereafter, these thirty-one were placed on the regular substitute list of the Daily News? A. They were put on that list, that is true.

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Q. Isn't it a fact that you told Mr. Rotenberg not to put Mr. Randall to work in his priority spot on that extra list on any night other than Friday or Saturday? A. I did not.

Q. You did not? A. No.

Q. What did you tell him? A. Well, I am glad you let me answer it that way, and I want to put this on the record.

Willis Rotenberg is one of my dearest friends, and he is a very good man in running the mail room of the New York Daily News. He knows his business thoroughly. But sometimes when he is talking to you in a conversation, he gets ideas that you are giving him a decision on something.

All we had, and the only thing he really said that was true about our conversation, is that it was a conversation. I didn't tell him and I never have told anybody in any form how to hire help, and I think I have said that in that affidavit you have there.

Trial Examiner: The question is, what did you tell him.

The Witness: He told me about the thing, and I didn't say anything about hiring at all.

Trial Examiner: What did you say?

The Witness: I did say this to him: That all the

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time that I have been dealing with this hiring business—and particularly in the Daily News, and with Ivan Annenberg when he was circulation director, and Bill Denhardt when he was there, everybody that has been in the circulation department that we

deal with—they have always insisted that the men, insofar as working in there is concerned, that they go to work as of the day they shape every week. That is all I told Willis Rotenberg.

I said, "As far as I am concerned with the thing, with Randall or anybody else, you do the hiring; you are the foreman. I have nothing to do with it."

That has been my stand with all the foremen, even to the extent that I tell every chairman in our union never to have anything to do with the hiring. The foreman does the hiring; under the contract he does it, and under the law he does it.

I never told Willis Rotenberg anything like what he said here.

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Q. Tell me only what you told Mr. Rotenberg. A. I say that they took a stand that a man goes to work on the night on which he shapes for that night in his priority for that night. That is the way they always took it.

I don't consider it priority at all. Even our own members, if they went in for an extra night in the News, they have no priority in the News. You can only hold priority in one shop under our laws.

He is trying to hold priority all over the city when he had his job outside. He is a foreman in another shop.

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CROSS EXAMINATION:

Q. (By Mr. Carter) * * *

Q. Prior to the enactment of the Taft-Hartley legislation, was there a closed shop arrangement in existence be-

tween Local 6 and the publishers signatory to the contract? A. Yes.

Q. And in a word, what did that mean? A. It meant that our people were employed in the shops under our agreement with the publishers.

Q. And in order to be employed, they had to be a member

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of Local 6? A. Yes.

Q. You go back to the era during World War II? A. Yes.

Q. Commencing in 1940 or 1941 or thereabouts, did a substantial number of members of Local 6 enlist in the Armed Services? A. Yes.

Q. And as a result of that, was there in some instances a shortage of manpower insofar as the mailing operation of the newspaper business was concerned? A. Yes.

Q. Thereafter did men become employed in the various newspaper shops in New York City who were not members of Local 6? A. Yes.

Q. Were they, in effect, substituting, or, to use the vernacular, pinch-hitting for members of Local 6 who were away in the Armed Services? A. That's right.

Q. As of the time of the enactment of the non-discriminatory provisions of the Taft-Hartley Act, in the City of New York and particularly at the Daily News, were there men who had been working in the mailing end of the industry who were not members of the union?

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A. Yes.

Q. To your knowledge, had a substantial number of those men, not only in the mailing end but in the delivery

and other ends of the newspaper business, attained some seniority by reason of their work records at the various newspapers? A. As of now?

Q. As of 1948. A. Had they—

Q. Had they attained some seniority? A. Yes.

Q. Thereafter, did you receive legal advice with respect to the non-discriminatory provisions of the Taft-Hartley Act? A. Yes.

Q. Did you have problems in the various mail room shops with respect to hiring? A. At times, yes.

Q. Did you consult with members of the Publishers' Association in an effort to work out a hiring program with respect to non-union men and union men, to the end that the hiring would be within the law and non-discriminatory? A. Yes.

Q. Did you confer on occasions with Mr. Mapel, who is president of the Association, and representatives of other publishers to that end?

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A. I did.

Mr. Richman: Could we have the time on that?

Q. (By Mr. Carter) Commencing in about 1949? A. That's right.

Q. So far as you know, up through from 1949 right down to the present date, has the hiring system agreed upon between the Publishers and the Mailers' Union been consistent with the provisions of the Taft-Hartley law? A. It has as far as I know.

Q. Is this the first time Mailers' Union No. 6 has been cited with respect to an alleged hiring discrimination? A. It is the first time.

Q. Is it inherent in the mailing end of the newspaper

business that there be a certain amount of casual employment? A. Yes.

Q. Has the shaping system been in effect and in force in the mailing end of the business at the various publishers in New York City? A. As of what?

Q. The shaping system? A. These men show up for work and look for work on the days when we have trouble.

Q. As I understand it, if they are not holders of regular situations, it is necessary for them to shape? A. I don't like to use the word "shape." They show up

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looking for work.

Q As I understand the testimony here, for some period of time you had a priority list with respect to regular situation holders, regular substitutes, and extras? A. We have a priority list, a union priority list, of regular situation holders and regular substitutes. There is a list, I believe, in all shops, of extras—in all shops where it is necessary—of extras that the foreman makes up himself. That is not our list; we don't have that list.

Q. In your judgment, has stability of hiring and stability of employment been beneficial to the industry? A. Yes.

Q. Have you worked in close collaboration with the Publishers to the end that the hiring practices become as stable as possible? A. Yes.

Q. To that end, did you admit to membership, or did your organization admit to membership, in Local 6 a substantial number of men employed in the industry who had theretofore not been members of the union? A. Yes.

Q. Was it the policy of Local 6 to admit to membership persons who did not intend to earn their livelihood in the mailing industry? A. No, it is not our policy.

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Q. During 1951-1953—during that era—did Local 6 admit a substantial number of non-union men to membership in Local 6? A. Yes.

Q. Were those men employed by the various Publishers signatory to the contract? A. Yes.

Q. Including the Daily News? A. Yes.

Q. Was your purpose in admitting those men to membership to make the hiring practices in the industry—and particularly at the Daily News—more stable? A. That's right.

Q. Were you satisfied or was your organization satisfied, before admitting these men to membership, that they had intended to devote their life to earning their livelihood in the mailing end of the newspaper industry? A. That's right.

Q. So far as you know, from that period—namely, 1951—right down to the present date, in collaboration with the Publishers, are the hiring practices in the mailing end of the industry non-discriminatory? A. Absolutely.

Q. In 1956, the evidence would indicate here that at the shop of the Daily News, there was a priority or hiring

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list containing the names of about sixty or seventy extras. Apparently, those men were being hired by the foreman on the basis of their seniority in the shop.

The evidence further indicates that none of those sixty or seventy men were members of Local 6.

Mr. Richman: Could we have the witness's answer?

The Witness: I am only listening.

Mr. Carter: This is preliminary to the question.

Q. (By Mr. Carter) Did you have knowledge that that condition existed at the Daily News at that time? A. Yes.

Q. Did that become a subject for discussion between you and officials of the Publishers' Association with respect to devising ways and means within the framework of the law to alleviate that situation and make for more stability of employment? A. Yes.

Q. Did you undertake those conferences? A. Yes.

Q. As a result of them, did you have an understanding with the Publishers, more particularly, the management of the Daily News, that you would undertake a survey with their help and cooperation to determine how many of those sixty or seventy men intended to devote their life and earn their

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livelihood as mailers? A. Yes.

Q. Did the Publishers and the Daily News cooperate with you to the extent of furnishing you with the information in that regard? A. They did.

Q. Thereafter, did you enter into an arrangement or understanding with the Daily News that all men in that so-called extra or casual category who had for a period of approximately two years worked on an average of three nights a week, or had computed sufficient vacation credits to indicate that fact, that they would be promoted from the extra category to the regular substitute category? A. That is correct.

Q. Was that a firm understanding you had with the management of the Daily News? A. That is correct.

Q. Did you also make known to them that those who qualified under that standard formula, in your judgment, would make fit members for Local No. 6? A. Yes.

Q. In your judgment, was that standard arrived at fair, equitable, and, so far as you know, non-discriminatory? A. Yes.

Q. And these thirty-one men who we have heard so much

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about here, were they promoted from the list of extras at the Daily News to regular substitutes, pursuant to that arrangement? A. They were.

* * *

Q. In that connection, did you have each of the sixty or seventy non-union men at the shop of the Daily News fill out a questionnaire? A. We did.

Q. Did you ask them for their work record? A. Yes.

Q. Did you ask them for their intentions as to the manner in which they intended to earn their future livelihood? A. We did.

Q. Were you satisfied, at least so far as the thirty-one are concerned, that (a) They had qualified for the standard which you and management had agreed upon; and (b) That they intended to earn their livelihood as mailers in

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the future? A. We did.

Q. In your judgment, was the standard arranged between you and the management of the Daily News fair, equitable and non-discriminatory? A. It was.

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Q. The priority list that we are speaking of, which shows only the union members, is designed for what purpose? A. It is a priority list of our union members to go

to work according to their hiring in the shop as union members.

Q. Did the union ever negotiate any other hiring list with the Publishers or with any of the Publishers governing the hiring of extras? A. The only time we ever had anything with the Publishers along that line would be the time I spoke with Mr. Mapel.

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Q. That wasn't in connection with contract negotiations, was it? A. No.

Q. That was in connection with the administration of current practices? A. That's right, at the time.

Q. Did the union ever negotiate with the Publishers, or any of them, as to what the interrelationship should be between the one list and the other, for the purposes of hiring, and how the Publishers should hire as from the two lists? A. No.

Q. Did you ever demand of any of the Publishers, in contract proposals or otherwise, that they first hire exclusively from the priority list which shows the union members only? A. No.

Q. You say you don't know personally of any regular situation holders at the News or at the Wall Street Journal who are not members of the union; is that correct? A. Regular situation holders?

Q. That's right. A. No, I don't.

Q. If there happen to be six of them at the News, as I suggest to you, you won't be able to identify them by name;

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is that correct? A. I wouldn't, no.

Q. The priority list applying only to union members is in the order in which the named persons have deposited

their cards at that particular chapel; is that correct? A. That is correct.

Q. That embraces not only those actively working at the shop in the mail room as regulars and as regular substitutes, but the foreman as well, and the superintendent as well, doesn't it? A. Yes.

Q. So that General Counsel's Exhibit 6 would show Mr. Rotenberg's name and his appropriate priority listing; is that correct? A. Yes, it did.

Q. And the current list, is that a fact, would show his name? A. Yes, that's right.

Q. Do you happen to know what his listing is currently? A. No, I don't, but it must be very high.

Q. Do you happen to know what the current priority listing of Mr. Every, the foreman at the Wall Street Journal is? A. I just looked at it, but I don't know. I think he probably would be number one.

Q. Mr. Rotenberg isn't number one in the Daily News?

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A. He is pretty close to it.

Q. You were asked about a meeting of the union in March of 1956 at which a certain criterion was set up for the enlistment of members to the union; is that correct? A. That's right.

Q. That criterion was what? A. We were supposed to—we were trying to take in new members, and we figured on an average of a man who worked three shifts a week would be entitled to join.

Q. What about those with four and five? A. At least an average of three shifts.

Q. There were some who were working as many as five? A. Yes, of course.

Q. Do you happen to remember how many there were working as many as five? A. Well, on that thirty-one, to the best of my memory, I would say that out of those thirty-one—

Q. I am now asking about the total membership in the newspapers. A. Of the whole 125?

Q. I am asking you without reference to the 125 or any other number.

How many men, in March, 1956, before you took in any new members, were working as many as five shifts a week? Do you recall that at all?

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A. Of the non-union people?

Q. Yes, the men who were not in the union at that time. A. I would say probably we had approximately ninety.

Q. How many working as many as four? A. Then you would have above the ninety maybe around thirty-five working an average of three or better, and some places where some one or two shops, where we needed fellows to cover the work in those shops, they maybe didn't have an average of three.

That was according to what we needed in those other particular shops; they are smaller shops.

Q. Was that the only criterion set up, the number of shifts a man was working, as translated into vacation credits? A. What; to process them?

Q. To take the men into membership? A. No.

Q. What else entered into it? A. Well, our first requirement is competency to perform the work, and then we certainly are at all times watching that we don't take in the wrong kind of people into the union which would be no good for us or for the employer. We want real decent

American citizens and decent people who will uphold the standards of our union.

Q. Are you concerned at all with whether or not a man intends to make mailing his life's work?

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A. Absolutely. That is another one of the requirements. We feel that those men, as you asked me the questions before, we had probably ninety who were working five. That proves that.

Q. Were there some men working five whom you did not, in June of 1956, take into membership? A. Some that we didn't take into membership?

Q. Yes. A. No.

Q. You don't recall any? A. No.

Q. I want to show you this paper and direct your attention to the first column on the left-hand side.

I will ask you whether that refreshes your recollection at all as to whether you took in all men who were working five shifts at that time in June of 1956.

This relates particularly to the News. A. Yes. Mr. Sugarman, there are three members on the bottom of this column here on the left side, Tirelli, Monaghan Junior, and Messerschmidt—they never worked five. They are on this column here as shaping five. They were shaping regularly five or more days.

That don't mean they worked five. These three didn't have the consistency of working five; but all the rest of them were getting their five, at least three, and

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most of them were getting five and they were all taken into the union with the exception of those three.

Q. But the mere shaping of five wasn't enough to get

the man in if he had other qualifications? A. Of course not. They may shape and not work.

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Q. And the only thing that was discussed with Mr. Rotenberg then was whether Mr. Randall had any rights on a Sunday night as carried over by reason of the fact that he worked regularly on a Friday and a Saturday night? A. That's right.

Q. It was your opinion that he had no such rights? A. It was my opinion, and my opinion is right now the same as at that time or at any time, that after my conversation with different executives in the News offices over the years, that that was always the stand that was taken.

Even in the Publishers' group, that same stand was

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taken. The man had priority on the night on which he worked as an extra.

Q. That wasn't anything you had negotiated with the Publishers? A. No.

Q. Was it anything you demanded of the Publishers? A. No.

Q. It was simply made known to you by the Publishers that that was the way they were going to do their hiring of extras? A. It always came up in conversations.

Q. Did Mr. Rotenberg ask you what to do should Mr. Randall show up on the next Sunday night, July 22nd? A. He did not.

Q. You referred to a letter, I believe you called it, which Mr. Mapel had sent out to the Publishers in 1951; is that correct? A. That's right.

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Q. (By Mr. Sugarman) I show you this four-page document, evidently in some photocopy form, on the letterhead of Publishers' Association of New York City, dated April 4, 1951, address to the Business and Circulation Managers, from William Mapel, noting at the foot of the last page copies to yourself and Frank O'Hara, and I ask you whether this is the letter that your referred to. A. Yes, this is the letter.

Q. Did you receive a copy of this letter at about the time of its date? A. Yes.

Q. Have you read this in the course of the past few days in preparation for this hearing? A. Yes, I did. I haven't looked at it for a little while.

Q. Does that letter fairly set forth, in substance, the conversations you had had with Mr. Mapel at that time? A. Yes.

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Mr. Van Arkel: I have just a few questions.

Q. (By Mr. Van Arkel) Mr. Smollon, in the course of your testimony, Mr. Richman inquired about the order of hire, and I believe your testimony was that those first hired were regular situation holders, and following them the regular substitutes were hired. Then I think you gave two different answers to the question about the next order of hire.

At one point you stated that experienced men from other newspapers were hired, and then, in response to further questions from Mr. Richman, you said that card holders from

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other newspapers were hired.

Now, could you clarify your answers to those questions? A. Well, Mr. Van Arkel, I did say in the first question from Mr. Richman about regular situation holders from other papers—I said they were experienced men from other papers, and that is just what I meant by it. I think then, if I recall rightly, Mr. Richman said to me, well, they are card holders.

Q. Are, in fact, the regular situation holders and the regular substitutes at the other newspapers, by and large, members of your organization? A. By and large, they are, yes.

Q. Is that the reason that you described them as card holders? A. I would say that that would be the reason, yes.

Q. Would it be a correct understanding of your testimony, then, that the third group to be hired are those who have the status of regular situation holders or regular substitutes at other newspapers? A. Yes.

Q. If such a regular situation holder or substitute were a non-union man, would he be entitled to go to work ahead of extras? A. Just the same as any other person with experience or

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a regular situation or a regular sub from any other newspaper would be, yes.

Q. You referred to this union priority list, and you mentioned that on that list, for example, appeared the name of the superintendent; is that correct? A. I said I thought it did.

Q. Would that priority list also have on it the names of people who are away in the Armed Services? A. Yes.

Q. Would it also have on it people who were engaged

in union business full time, and who were not reporting for work at the newspaper? A. Yes.

Q. Who is Mr. Valentine? A. He is the secretary-treasurer of Mailers' Union No. 6.

Q. Is that a full-time job? A. Yes.

Q. Does he work at the trade? A. No.

Q. Do you know whether or not his name appears on any priority list? A. The New York Times priority list.

Q. How about persons becoming International Officers of the Union? Do their names remain on the priority list? A. Yes.

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Q. Are there any other categories of persons who are not at work, whose names are shown on priority lists? A. I mentioned anybody connected with the trade union movement, in any capacity, working for the government, and they have their priority protected in any shop they worked in before they went into Government service. Of course, you said the Armed Services. A man who is off sick, or disabled, he stays on the priority list.

Q. This, then, is not a hiring list, is it? A. No; it is a priority list.

Q. Is one of the purposes of maintaining this list in order to collect dues? A. What?

Q. Is it used to collect dues? A. Yes, the chairman uses that to collect his dues.

Q. Are persons who remain on the priority list, but who are not working at the trade, required to pay dues while they are not working? A. Yes, they have to pay minimum dues; or if it is the maximum, I am not positive. I am not sure just how that is.

Q. But they do continue to pay dues? A. They pay dues, yes.

Q. Even though they are not working at the trade?

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A. That's right.

Q. These thirty-one men that we have discussed who were taken in the union on June 10th, 1956, were all of them offered the opportunity to become union members? A. The thirty men?

Q. The thirty-one men. A. Yes, they became union members.

Q. Did any of them object to becoming union members? A. No.

Q. They all became members of their own free will? A. Yes.

Q. Has that been true of the other occasions you have mentioned when the union has taken in a group of men at a time? A. We have never had anybody object to becoming a member of the union.

Q. Would you say that it is accurate that they want to become members of the union? A. Yes.

Q. They are anxious to become members? A. Anxious, very anxious.

Mr. Van Arkel: That is all I have.

Trial Examiner: Any further questions?

Mr. Richman: Yes.

In addition to the offer of General Counsel's Ex-

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hibit 8 for the material on Page 5 starting with the second paragraph, I would like to offer this also for the first paragraph on page five as being statements in this affidavit which contradict Mr. Smollon's testimony in response to Mr. Carter's questions on the agreement allegedly enforced between the company

or the publishers or the union with respect to taking in new members.

Mr. Sugarman: I don't know what that means.

Mr. Van Arkel: You admitted the whole thing, didn't you?

Trial Examiner: I admitted it specifically for the purpose which was stated, and at that time it was qualified to certain sections on certain pages.

Now General Counsel wishes to expand it to another section on another page.

Mr. Richman: On the same page, sir.

Mr. Van Arkel: Why not simplify it and offer it all?

Mr. Sugarman: I offer it for all purposes.

Mr. Richman: I object to its offer for all purposes.

Trial Examiner: This is General Counsel trying his case, and I am not going to tell him what he should offer or what he shouldn't offer.

Mr. Sugarman: May we go back to re-cross examination?

I now offer it for all purposes, it being

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contradictory of something or other somewhere in the case in all respects and in each and every respect.

* * *

RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) * * *

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Q. How did you, then, achieve more stability by taking in thirty-one of these people into the union? A. We had

more stability, I would say, and it would make it more stable as far as our covering the shop is concerned with competent men to do the work. Those people who we took into the union then, and who became members of the union, at least they became subs on that regular priority list, the stability would come there, would be that they would be in there working five shifts a week.

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Q. In fact, after these men got their cards, did they shape five shifts a week? A. Certainly. That is why they came into the union; they wanted to make it their livelihood.

Q. Are you sure of that, that they in fact shaped five shifts a week after they got their cards? A. I would say in most cases, yes. There may be a fellow that doesn't.

Q. Isn't it a fact that in some cases the men got their cards and shaped one or two nights a week at the Daily News, and then shaped elsewhere on other nights? A. If they did, I would stop them immediately.

Q. You don't know of any such case? A. I would stop them immediately.

Q. Do you know of any such case? A. That they have done that?

Q. Yes. A. It has never been brought to my attention.

Q. You spoke about competency of these thirty-one men. Did they become competent when they got their union cards, Mr. Smollon? A. They obtain competency as they work over the years in covering the shop.

Q. Mr. Randall also worked over the years.

Do you recall the testimony to that effect?

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A. Mr. Randall—I think he said he worked there ten years on Friday and Saturday nights.

Q. That's right.

Do you consider these men with fifteen days vacation more competent than Mr. Randall, who only had twelve days of vacation?

* * *

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A. I would consider them more competent, certainly, because they had their fifteen days vacation and they had been working there more consistently over a shorter period, although he had been working a longer time, and they would have more opportunity to get in and do all the different kinds of work that are being done in the shop.

I also feel that in any kind of competency test, that practice makes perfect. The more you do a thing, the better you get.

These men, even in the time after they had their fifteen days vacation—he still only was working an average of two days a week—they were working, by that time, maybe four or five days a week.

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Q. (By Mr. Richman) Did you get from the newspapers information on how many days a man shaped? A. I got it from the questionnaires we got.

Q. Only from the questionnaires?

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A. From the questionnaires.

Q. Isn't it a fact that some of the men who earned fifteen days earned those fifteen days by working not throughout the year, but only during certain parts of the year? A. I don't think so.

Q. Did you check to see whether, in fact, that was true? A. I couldn't say that I did check.

Q. So, therefore, it is possible, is it not, that a man with fifteen days could have earned those fifteen days by shaping and working only from, let's say, January through September, and not shaping the rest of the year?

* * *

A. My answer would have to be: I doubt it very much; but you said it is possible, and I couldn't say no, that it is not possible.

Q. Isn't it a fact that you just looked at the fifteen days vacation for those two years as a criteria? A. It is not a fact. I looked at the questionnaires that they filled out, and the information I got from the

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Publishers.

Q. But a man, in order to be eligible for membership at the time, must have first this fifteen days vacation? A. We came down to fifteen days.

Q. You wouldn't have considered a man with less than fifteen days for membership, apart from other factors that you said? A. No, because he wouldn't have been consistent enough.

Q. Did you get from the Publishers information as to how many times a week a man shaped? A. The Publishers wouldn't know that. They have no way of knowing.

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Q. Isn't it a fact that the deposit of the card with the chapel chairman signifies that the man who deposits the card wants to work at that particular shop on a permanent basis? A. It sure does, yes.

Q. After depositing the card, he goes to the bottom of the priority list as a regular substitute? A. Right.

Q. If a non-union man came to the chapel chairman and

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said that he wanted to work at the shop on a permanent basis, would he be put on the priority list as a regular substitute? A. Not on the union priority list, no.

Q. He would have to go on any extra list that exists? A. That's right.

Q. A non-union extra list? A. That's right.

Q. When we spoke about the competency of these thirty-one people of the Daily News that you admitted to membership, did you give any competency test at the time you admitted them to membership? A. Yes.

Q. What did that test consist of? A. We have an investigating committee, a membership committee, that investigates the qualifications of the man to become a member. They investigate them in the competency of the work, and what kind of people they are, and whether they want to stay with the business, and all that.

Q. When was this investigation conducted? A. It is always conducted before the final meeting of the union when the members are voted on to be accepted into membership.

* * *

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Q. In answer to Mr. Van Arkel's question, I think you said that these regular situation holders and regular substitutes from other shops coming into the Daily News for work were by and large members of the union.

Do you recall that? A. Yes.

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Q. Isn't it a fact that all of them are members of the union? A. I believe so.

Q. Not by and large? A. By and large, they are all members of the union.

Q. Also in answer to Mr. Van Arkel's question, you stated that there are names on the priority list of people in the Army and people away on union business.

Their retention on that list is in accordance with the general laws provisions; is that not so? A. It is in our contract.

Q. It is in your contract, too? A. Yes.

Q. But it also is in accordance with the general laws? A. Yes, of course.

Mr. Richman: No further questions.

Trial Examiner: Any further questions?

Mr. Sugarman: Yes, please.

RE-CROSS EXAMINATION:

Q. (By Mr. Sugarman) In connection with the last question of Mr. Richman concerning the stabilization of employment in the mail room, my notes show that you said that you would stop new members from working in another shop.

Do you recall that testimony? A. Yes, I do.

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Q. Is there some two-year rule which your local enforces with respect to new members? A. Yes.

Q. What is that? A. New members coming into the union sign a statement that they will stay in the shop they are in and assigned to for a two-year period. That is a reason for that.

Q. What is the reason? A. The reason is that those particular shops need these men for the coverage of the work that is in those shops. That is to cover the employer, to see that he has the proper men to do his work,

and they stay there for two years until that two years is up.

Q. You forbid these men to float and pick and choose their work? A. That is correct. That is under the control of the organization.

Q. Did you have a membership committee passing upon the applications of the batch of men who were later taken in on June 10th, 1956? A. Yes.

Q. In addition to the actual employment work records supplied by the Publishers, did the membership committee also have any information and records as to the so-called shaping of the men?

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A. Yes.

* * *

Q. (By Mr. Sugarman) I show you Mailers' No. 6 Exhibit 6 for identification, and ask you what it is. A. This is a list of names as to how these men showed up for work in the office of the Daily News prior to their becoming members of the union.

Q. Was this information part of the information you have

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just referred to as having been supplied to the membership committee? A. That's right.

Mr. Sugarman: I offer it in evidence, all except the pencil check marks, which were mine, and I noted here yesterday when Mr. Richman was identifying through a witness particular names of men who became members of the union.

Mr. Richman: May I ask the witness a few questions with respect to this?

Trial Examiner: Yes.

Mr. Richman: Who made up this list?

The Witness: The foreman.

Mr. Richman: You mean Mr. Rotenberg, or someone else?

The Witness: Mr. Rotenberg.

Mr. Richman: The superintendent, you mean?

The Witness: I call him the foreman.

Mr. Richman: At whose request did he make this up?

The Witness: The request of the union.

Mr. Richman: This column on the extreme right, is that the list in which the non-union extras appear?

This is prior to your taking them into membership?

The Witness: Up here (indicating on document).

Mr. Richman: Is this a copy of the hiring list of extras of the Daily News prior to June 10th, 1956, as

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far as you know?

The Witness: As far as I know, yes.

Trial Examiner: That is the list column you are referring to?

Mr. Richman: The last column on this exhibit.

Mr. Sugarman: Reading from left to right.

Mr. Richman: Yes.

How did this come into your possession?

The Witness: From the superintendent.

Mr. Richman: Mr. Rotenberg gave this to you?

The Witness: Yes. That was to help us in the selection of the membership. He passes on their competency, also. After all, he is the foreman.

Mr. Richman: With respect to the men shaping three days or less a week, were any of these admitted into membership on June 10th? Were they all admitted?

The Witness: They were all admitted, these here, yes (indicating on document).

Mr. Richman: All of these seven names?

The Witness: Yes, they were.

Trial Examiner: What column is that?

Mr. Richman: This is the column "Men Shaping Three Days or Less per Week."

The Witness: I believe all of them were.

Mr. Sugarman: Three days or less?

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The Witness: They were the ones that had the fifteen days credit.

* * *

Q. (By Mr. Sugarman) In addition, your membership

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committee, in screening the applicants for employment, or those who were working in the mail rooms who might become eligible for employment, had the benefit of information by way of the questionnaires you referred to; is that correct? A. That's right.

* * *

Q. (By Mr. Sugarman) I show you Mailers' No. 6 Exhibit No. 7 for identification, and ask you whether this is the form of questionnaire, disregarding the matter filled in in ink, which you referred to. A. Yes.

Q. What is that particular piece of paper, beyond it being the form of a questionnaire? A. This is the form filled out by Burton E. Randall to the union.

Q. It became part of the union records after he signed and submitted it; is that correct? A. Yes, that's right.

Mr. Sugarman: I offer this in evidence merely for the purpose of showing the form of questionnaire, and

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the fact that Mr. Randall in this manner filled out the questionnaire; but not for the purpose of the truthfulness of any of the answers given in the questionnaire.

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Q. (By Mr. Sugarman) Do you know whether your membership committee made any finding as to the truthfulness of the answer of Mr. Randall to the question as to the number of times he reported for work per week?

Mr. Richman: Objection.

Trial Examiner: The question is whether he knows. I will let him answer whether he knows.

The Witness: Whether the membership committee found—.

Q. (By Mr. Sugarman) Did they make any finding as to the truthfulness of his answer that he reported for work two to three times a week?

Trial Examiner: The question is whether you know if they made any finding. Answer that yes or no, first, if you know.

The Witness: I would have to say to that particular one, no, I don't know.

Q. (By Mr. Sugarman) Do you know whether his answer to the question as to the number of vacation credits he had for 1954 and 1955 was correct and truthful? A. These are not correct.

Q. In what respect? A. Well, he didn't have this many vacation days.

Trial Examiner: You know that of your own knowledge?

The Witness: Yes; from the News report. We checked

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with the News to get his vacation credits, and this is higher than what the News paid him.

Q. (By Mr. Sugarman) For which year, or was it for both years, exaggerated? A. I am not too sure, but it was less. I think he only had twelve days for the two years instead of fourteen or thirteen. You see, there are three years given here, six and seven, and seven and seven.

Mr. Richman: Mr. Examiner, the Witness Randall himself has stated that for those two years he had twelve days. I think it is a matter of record.

Q. (By Mr. Sugarman) You testified that your investigating committee, in passing upon or screening the applicants for membership, tested their competency? A. Yes.

Q. Where was this testing done? A. In the News mail room.

Q. You actually had a committee test them there? A. Yes.

Q. Was there a place in New York until recently other than the News where this testing of competency was done? A. Yes.

Q. On a regular basis? A. Yes. We used to take them to the New York Post mail room.

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Q. No matter what mail room they came from, your

committee would take them to the New York Post? A. Yes.

Q. When did you discontinue using the Post as the testing ground? A. I guess about three years ago because of this large amount of men we would be taking in at the one time. The Post mail room wasn't really big enough.

Q. Was this testing done during the regular production time? A. While the presses were running.

Q. It was done under the supervision of journeymen, was it? A. The membership committee are journeymen members of our union.

Q. If the test should fail, was there any risk to the production line?

If a man weren't able to keep up his end of the work while being tested, was there any danger that production would be hampered? A. At the place where he was being tested?

Q. Yes, during the testing. A. No, I don't believe so.

Q. There would be someone there— A. There would be other journeymen to pick it up.

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Q. Finally, has the union, and you as the president of the local union, from time to time received grievances directly from extras? A. What do you mean?

Q. Grievances of one kind or another? A. Very, very seldom. We do, yes; they come in sometimes.

Q. Haven't you, in fact, processed some grievances for extras? A. I had a case where I knew of one extra, as we call them, that the foreman fired.

Q. Was this extra, by the way, a union man or a non-union man? A. No, non-union. He was fired, and this was on the Daily Mirror, and that goes back a few years. The foreman fired him.

Q. Did you go to bat for him? A. I got him back to work, yes.

Q. Do you recall offhand any other extras for whom you went to bat on a grievance?

Let me mention the magic number, seven out of ten. Does that raise anything in your memory? A. That is not—

Q. I am talking about extras. A. I didn't get the part of the extras.

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Mr. Richman: Could the witness be permitted to testify?

Trial Examiner: What is your answer?

The Witness: The answer to that is yes, we have had a grievance. We had a grievance on the holiday clause of our contract.

Q. (By Mr. Sugarman) For all extras? A. For extras and everybody else.

Q. For all other than regular situation holders? A. That's right.

Q. That comprised the non-union men and the union men; is that correct? A. Of course.

Q. You went to arbitration, as a matter of fact? A. That's right.

Q. And a series of arbitrations, in fact, involving various facets of the holiday problem; is that correct? A. That is correct.

Q. In all those cases, only extras were involved? A. That's right, only extras.

Q. Those arbitrations took place within the past year or year and-a-half or so before Judge Baar in the main; is that right? A. Yes.

Q. That affected quite a few hundred extras in the

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industry, did it not? A. Yes.

Q. If I may put it this way, you won those case, you got awards favorable to your contentions; is that correct? A. That is correct.

Q. As a result of winning those cases, did you have complaints from union members who were working as extras that their toes were stepped on by this, and they squawked? A. Yes.

Q. Isn't it a fact that some of the union members who were working as extras were denied the benefits of holiday pay because non-union extras, by virtue of the award contended they should rightfully be paid, received the holiday compensation?

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Q. (By Mr. Sugarman) In the processing of those holiday grievances through arbitration, there were union men involved and there were non-union men; is that correct? A. That is correct.

Q. Most of them were what: union or non-union? A. Union.

Q. Most of the extras? A. Wait; I get mixed up when you say extras against priority men.

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Are we talking now about the extra list in the shop, the foreman's list?

If it is the foreman's extra list, then they would be non-union. If we are talking about substitutes on our regular list, that is something different. There were a lot of them involved.

Q. I am talking now about extras as distinguished from regular situation holders within the meaning of the contract. A. Then I would say that they would be both in there.

Q. More union or more non union? A. I think there would be more non-union in many holidays, and in other places they were union. It is according to what night the holidays falls on.

Q. Were the awards favorable or unfavorable to your contentions on the grievance? A. They were favorable to us.

Q. How did they affect the various extras, both union and non-union? A. Well, I could give you an example of a case we had here with the last holiday.

Q. What was that?

Mr. Carter: Didn't the award benefit them?

The Witness: It benefited the non-union man, that's right.

Q. (By Mr. Sugarman) Did you have any squawks from the

union men as a result? A. Certainly I had squawks.

Mr. Sugarman: That is all.

Mr. Van Arkel: I have one further question, Mr. Examiner.

Q. (By Mr. Van Arkel) Mr. Smollon, in answer to a question put to you by Mr. Richman, you testified, I believe, that if a non-union man were to apply for work, that he would then go on the non-union extra list.

Let me put the question to you this way:

If a non-union man who had established competency as a journeyman were to apply for work, would he be given the priority to which he was entitled? A. I would say yes.

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FURTHER RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) Mr. Smollon, how does a non-union man go about establishing his competency as a journeyman? A. By working around in the shops until he becomes competent.

Q. Until he becomes competent? A. Yes.

Q. Who judges his competency? A. The foreman.

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Q. (By Mr. Richman) As far as you know, are there any non-union people who are working under this contract that we have in issue here, who are considered competent journeymen? A. Are there any?

Q. Yes, as far as you know? A. I would say no.

Q. With respect to this competency test that your committee gave out, isn't it a fact that this committee tested the competency of only these thirty-one men?

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A. Only of those thirty-one men who we had considered who had become competent journeymen, and that we could make regular substitutes of.

Q. Also, isn't it a fact that generally your committee tests the competency only of those people who are applicants for membership? A. That is true.

Q. The committee doesn't go around testing the competency of people who are not applicants for membership? A. The foreman is the one that does that.

Q. Do you know whether the foreman of the Daily News, or, rather, the superintendent of the Daily News, in the past several years has ever tested the competency of anyone who is not an applicant for membership in the union? A. I think he watches the competency and tests the competency of every man that goes to work.

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WOODRUFF RANDOLPH, called as a witness by and on behalf of International Typographical Union, AFL-CIO, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Van Arkel) What is your full name, please? A. Woodruff Randolph.

Q. What is your present position? A. President of the International Typographical Union.

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Q. For what period of time have you been president of the International Typographical Union? A. Since July 15th, 1944.

Q. Had you been an officer of the International Union prior to that time?

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A. Yes. I was secretary-treasurer of the International from November 1st, 1928, until July 15th, 1944.

Q. Prior to that time, had you held any office in the I. T. U.? A. I had been president of the Chicago Typographical Union for one term, chairman of the night chapel of the Chicago Daily News for several years, and chairman of the newspaper scale committee of Chicago Union No. 16 in 1923 and 1924.

Q. In that connection, Mr. Randolph, do you still hold priority with the Chicago Daily News? A. Yes, I do.

Q. Are you still carried on their priority list? A. Yes.

Q. Have you been throughout these years that you have been an International officer? A. Yes, I have.

Q. Do the by-laws of the International Typographical

Union specify the conditions under which officers of the International Union may come into local situations? A. Yes.

Q. Without reading them into the record, what briefly do they provide? A. Article 19 of the by-laws provides that in cases where there is danger of a strike, the president or his

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proxy must visit the jurisdiction and try to arrange a settlement before the executive council would consider a request of the local union for strike sanction.

Q. Is that only at the request of the local union that the International officers can intervene in negotiations? A. Yes.

Q. Pursuant to those provisions of the laws, did you in 1948 come into New York in connection with the negotiation of an agreement with the New York commercial employers? A. I did.

Q. Do you recall about when that was? A. In March, 1948.

Mr. Richman: May we have a definition of "commercial employers"?

Q. (By Mr. Van Arkel) Would you describe the two branches of the craft, Mr. Randolph? A. We refer to the commercial employers as being those who do what we call commercial printing or job work, magazines and similar publications, and all kinds of matter other than daily newspapers. We refer to the newspaper field as the daily newspaper field.

Q. And traditionally have collective bargaining relations in the industry drawn a distinction in the making of agreements between commercial printers and newspapers? A. Yes.

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Q. At the time that you entered these negotiations in New York, the Taft-Hartley Act had become law, had it not? A. Yes.

Q. Had that raised any legal questions insofar as these negotiations were concerned? A. It raised a great many legal questions.

Q. With whom did you meet in the course of these negotiations? A. I met with the joint committees of the union and the employers.

Mr. Richman: Can we have a more specific identification, please?

The Witness: The committees of the New York Typographical Union No. 6, and the Printers' League of New York City.

Mr. Van Arkel: Do you want the names of those that were present?

Mr. Richman: No; I just wanted the two groups.

Q. (By Mr. Van Arkel) At some point in the negotiations, did any outside party enter? A. At one time, in an effort to avoid what appeared to be an impending strike, Theodore Keehl, then holding a position of some kind in the office of the Mayor of the City of New York, intervened and asked to be of help in conducting negotiations in his office.

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Q. Were those services taken advantage of? A. Yes. We did meet in his office, and it was during the meeting so held that the Printers' League and the Union tentatively agreed on contract provisions other than wages and hours.

Q. Was the employers' group advised by counsel in those negotiations?

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A. Yes, they were.

Q. Did much of the discussion turn on the legal issues which had been raised by the Taft-Hartley Act? A. That is true, yes.

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Q. Did you finally succeed in arriving at an agreement which the Printers' League and you felt to be a lawful agreement? A. That's right, we did.

Q. I would like to show you this document marked "Scale of prices for Book and Job Work," effective April 19th, 1948, and ask you if that is the agreement that finally resulted. A. It is.

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Mr. Van Arkel: I would like to call the Examiner's specific attention at this point in the record to Section 4 of this agreement, found on page four,

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particularly the definition of journeyman contained at the bottom of page four and at the top of page five.

Q. (By Mr. Van Arkel) Mr. Randolph, subsequently did you again have occasion to come to New York in connection with negotiations with the newspaper proprietors? A. Yes, I did.

Q. Was that in that same year? A. That was in the same year.

Q. Do you recall when? A. Approximately in July.

Q. Was that pursuant to the same provisions and by-laws that you previously referred to? A. Yes.

Q. You came in at the request of the local union to help adjust the difficulty? A. Right.

Q. Could you tell us who the representatives were with whom you dealt? A. The New York Publishers' Associa-

tion, or the Publishers' Association of New York City, and the scale committee of the New York Typographical Union No. 6.

Q. Were they also advised by counsel? A. They were.

Q. Did they make any objections to any provisions which had been contained in the earlier commercial agreement that

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had been arrived at? A. They found some objection to one of the qualifications for journeymen—the recognition of journeymen printers.

Q. Do you recall what that was? A. As I recall, the commercial contract provided the automatic recognition as a competent printer any number of the International Typographical Union.

The New York Publishers' committee felt that even that automatic recognition of competency might be objectionable, and therefore they didn't want it in the contract, so that particular section, or those few particular words, were eliminated from that section.

Q. I would like to show you a photostatic copy of a document headed "Scale of Prices, Newspaper Branch, New York Typographical Union No. 6, August 9, 1948 to September 24, 1949," and ask you if that is a copy of the agreement that was arrived at with the New York City Publishers' Association. A. It is.

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Q. (By Mr. Van Arkel) Prior to this time, Mr. Randolph, had there been an injunction action instituted by the General Counsel against the International Typographical Union and its officers? A. There was.

Q. Had an injunction been issued? A. Yes.

Q. After the New York agreement was entered into which you have just identified, was a contempt action brought under that injunction? A. Yes, a contempt action was brought against me.

Q. In what Court? A. In Federal District Court in Indianapolis.

Q. Was the legality of the New York Publishers' agreement which you just identified challenged in that proceeding?

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A. It was.

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Q. (By Mr. Van Arkel) After the injunction had been issued, Mr. Randolph, did the International Typographical Union cause to be distributed to its local unions certain instructions and advice? A. It did.

Q. I show you a document with the heading of the "International Typographical Union, Instructions and Advice

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issued pursuant to the Injunction," and ask you if that is the document you refer to. A. It is.

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Q. (By Mr. Van Arkel) Before these instructions and advice were mailed to subordinate local unions, Mr. Randolph, had they been approved by representatives of the General Counsel of the Board? A. They had.

Mr. Van Arkel: I call the Examiner's attention particularly to those provisions dealing with "Jurisdiction, Union Foremen, Competency," contained in these instructions.

Q. (By Mr. Van Arkel) In the meantime, had the Labor Board also issued a complaint on charges filed by the American Newspaper Publishers' Association against the I. T. U.? A. Yes, it did.

Q. In particular, was one of those cases tried before Trial Examiner Leff? A. Yes.

Q. Do you recall that he issued an intermediate report with respect to those charges? A. I do.

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Q. (By Mr. Van Arkel) Subsequent to the conclusion of that litigation in the Court of Appeals, Mr. Randolph, were new charges filed against the International Typographical Union by the American Newspaper Publishers' Association? A. They were.

Q. Do you recall about when that was? A. I think it was around 1951.

Q. Did those charges undertake to challenge the legality of the clauses contained in the New York Publishers'

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Association agreement which you have identified?

Q. (By Mr. Van Arkel) What action was taken finally on those charges, Mr. Randolph? A. They were dismissed without a hearing.

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Q. (By Mr. Van Arkel). Since about 1948, Mr. Randolph, have the clauses contained in the New York Publishers' Association agreement been generally used throughout the United States? A. Yes.

Q. During the period since 1951, have any contempt charges been brought against the I. T. U. asserting that the

use of these clauses violated the injunction which had been issued? A. No.

Q. Have attorneys for Publishers and others generally agreed that these clauses were lawful? A. Yes.

Q. The agreement that you identified, that covered the printing end of the business, did it not? A. Yes.

Q. Have similar clauses been used in agreements covering mailer members of the International Typographical Union? A. Yes.

Q. In general, has the I. T. U. followed the same legal

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standards whether it was dealing with printers or mailers of the commercial end or the publishing end of the business? A. Yes.

* * *

Q. (By Mr. Van Arkel) Has the I. T. U. generally counseled its subordinate unions to employ the same clauses or closely similar clauses in agreements, whether or not they covered the printing or the mailing branch of the trade, and whether they covered commercial or publisher agreements? A. We have.

Q. One of the clauses in this agreement, Mr. Randolph, is that clause which provides for a joint union-employer determination of competency; is that correct? A. That is correct.

Q. In general, are the crafts in printing and mailing skilled crafts? A. Yes.

Q. Do both of these crafts require a degree of competency? A. Yes.

Q. Do printers and mailers operate as a team? A. I don't understand just what that means.

Q. Let's first talk about a composing room. Suppose

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you have in a composing room a certain number of men to turn out a certain amount of work. A. All right.

Q. If one of those men isn't competent to do the work, does that mean that the other persons then have to do it for him? A. They have to do it; the paper must get out.

Q. Does this give the members of the International Typographical Union an interest in seeing to it that they work with competent people? A. It most certainly is.

Q. Are there other reasons why either the members of the International Typographical Union or the subordinate unions of the I. T. U. are interested in seeing to it that competent men are employed in the trade? A. We not only want to see that they are competent in the trade processes, but that they have the proper amount of education, that they have good character, and are in good physical condition.

Q. Does the I. T. U. interest itself in the training of apprentices? A. Yes; extensively.

Q. Would you describe how? A. I have under my direction a Bureau of Education in Indianapolis that provides a correspondence course of

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training to some six thousand apprentices at this time. The course of training will usually stretch over a period beginning with the second year of apprenticeship and usually last until the fifth or sixth year.

The lessons are practical, and they are worked out by the apprentices in the shops with the assistance of journeymen where necessary, and the product is sent to the Bureau of Education, graded, and returned to a local apprenticeship committee so that it may see the progress the apprentice is making and see that he keeps up to the standards we set.

Q. Do local unions also have apprenticeship committees? A. Yes.

Q. Do they have joint apprenticeship committees with employers? A. Yes, they do in the larger jurisdictions.

Q. Is it part of their duty to see to it that apprentices learn all branches of the trade and become proficient as journeymen? A. Yes, it is.

Q. There has been testimony here, Mr. Randolph, about various categories of employment, such as situation holders, substitutes, and so on.

Could you tell us what a situation holder is briefly? A. The terms "situation holder, substitute, extra" have

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a remote beginning in the I. T. U. From the earliest days—and this goes back over one hundred years—there was only the situation holder, in a newspaper particularly, who had a situation seven days a week, and he was variously termed a situation holder or a regular.

If at any time he wanted to get off for a day, it was his obligation to the employer, and enforced by the union, that he supply a substitute for that day.

The industry at that time was all hand-set type, and a regular was assigned a set of cases, caps and lower case, out of which he set type for the night or day that he was employed.

He would return during the opposite shift on his own to distribute the type which he would set up on the next day. He wouldn't get paid for distributing the type.

Q. By "distributing type," I take it you mean to disassemble the type and put it back in the cases? A. That's right.

So that his choice of a substitute was based upon his knowledge of the ability of the substitute to distribute type

cleanly, as they referred to it, because that determined how much correcting he might have to do himself when he returned to work if his case was dirty.

In those days there was a list put up of substitutes who were competent to work in that office. The foreman put

up such a list and the regular's choice of the substitute was from that list.

As the union adopted a six-day week, the situation holder had to put on a sub one day a week, besides any day he might want to get off. That led to the charge of discrimination as against union people by virtue of having a selected list of people who might accept work, so that the union abolished the sub list as put up by the foreman, making each member eligible to go in and accept work in any union shop.

The terms "regular" and "substitute" thus were anchored then and anchored today to a competent journeyman.

As the union began making contracts with employers along about in the 80's, the situations were changed to the six-day situations, and each man was not required to put on a sub for a day, but that the situations were distributed over more regulars.

The practice after the abolition of the sub list was to put up, beginning at least in 1892, the putting up of a priority list so that there would be no discrimination against union men in the filling of situations.

In other words, those who made themselves available regularly for extra work given out by the office, or subbing, were discriminated against on the basis of friendship, religion, or politics, or anything else that might come up, and the

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union decided the foreman shouldn't have that amount of authority, so the priority law adopted in 1882 is basically the same today although it has been changed a little here and there.

The oldest sub in priority order is the one eligible for the first vacant situation.

Q. By "oldest," I take it you don't mean oldest in age? A. No; the one who had been showing up the longest period of time.

Now, the word "substitute," as I say, is anchored directly to a journeyman who is available either to be hired by the regular for any day he wants to be off, or be hired by the office, the foreman, for work needed to be done. So that the substitute who is a journeyman may be working as a substitute for another regular on one day, and he may be working as an extra for the office on another day.

Bear in mind that these are still all journeymen printers. The union recognizes only journeymen and apprentices as classifications; and in our contracts, including No. 6 Mailers and Printers, it is right in the contract that only journeymen and apprentices shall be recognized as the classifications.

Q. As the industry has changed and grown, and the size of the metropolitan newspapers has increased, has it become necessary in the printing and mailing trades, or in either

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of them, to provide at times for additional classes of employment? A. As the industry has grown and specialization has set in, it has been impossible that any one man learn the entire composing room scope of activity. He couldn't learn to run a linotype or to run a monotype or

learn to be a machinist, learn to be a casterman on the monotype, a proof-reader, a floor man, and all of the various classifications of a complicated trade.

Our apprentice system takes under consideration the teaching of the basic trade, what we commonly term a floor man, in addition to some one machine that the apprentice must learn during his six years.

It may be a linotype machine or a monotype machine or some other type of machine. Some may be required because of a particular kind of a shop they are; a specialty shop, for instance, they may not learn a machine at all, but they may learn, besides the basic floor work, proof-reading, copy preparation, and perhaps some other specialized line, and there are many.

In this specialization that has come to us, we have successfully found ways to operate our priority system, our principal priority system, without difficulty.

Q. Particularly at the mailing branch of the trade, is it characteristic that there are certain nights of the

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week when vastly increased numbers of persons are needed to get out the paper? A. Yes. It is a common difficulty to be met with throughout the newspaper field. The Sunday paper is usually of tremendous size, and besides perhaps a Saturday paper, there is a great deal of the Sunday paper produced and partially prepared for distribution on Friday and Saturday nights which swells the need on those two nights for a greater number than the union is capable of adequately supplying by way of journeymen.

Q. Who are these people in general? A. In some places they will try to cover them with journeymen and work double-headers on Friday and double-headers on Saturday, which becomes very burdensome. But on most of the

papers, the union realizes that it couldn't hold enough journeymen in the city to take care of two nights a week only.

It has been generally the practice in all but a few jurisdictions that most any kind of help that could be had was tolerated with the help of the journeymen on Friday and Saturday night so that the paper might be gotten out.

Sometimes it is college boys that need the money for an education; sometimes it is relatives of journeymen; sometimes it is people they scoop up anyplace they can get them to do the more laborious tasks in the mailing room to

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help get the paper out on Friday and Saturday nights.

Q. Is it true that in both the composing and mailing rooms it is necessary to have a certain corps of men who among them have all the basic skills that are necessary to the efficient operation of the composing room and the mailing room? A. That is true.

Q. Are they generally the group that constitute what you described as the situation holders? A. Yes.

Q. Who may be augmented from time to time by people of less skill who work under the direction of the situation holders? A. That is true mostly in the mail room; there are some in the composing room.

Q. Does the International Typographical Union also attempt to teach journeymen other branches of the trade? A. Yes. We have a training center in Indianapolis for journeymen only that costs us a tremendous amount of money and effort, whereby we are trying constantly to teach journeymen related processes brought into the industry by way of evolution, the new inventions that come out to either supplement or take the place of standard composing operations.

We try to teach them there, and we have the machinery there, and we keep them up to date on the evolution of the

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trade.

Q. Is this with the objective of supplying the industry with people competent to work on all processes involved in the printing and mailing trades? A. Yes.

Q. Have printers and mailers had a tradition of mobility at their craft? A. Yes. That has been one of the biggest factors of satisfaction both to employers and to our members, because any member may at any time request of the local secretary a travelling card. It is given to him on payment of his dues.

That traveling card permits him to go to any city in the United States or Canada where we have a union; deposit that travelling card, and be given a working card, and proceed to work in any shop that needs his help.

That practice of keeping journeymen on an even keel in competency and training pays off to the employer, because the force is thus mobile, and business may be poor in one city and journeymen printers take travelling cards and go to another city where there is work and fill in without any difficulty to follow the work.

It is a mobility of force, and it is the choice of the environment by the printer.

Q. When a person with such a travelling card goes into

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a new town, does he then go to the foot of the priority list at the particular establishment where he might seek work? A. Yes, he does.

Q. He then has to take his chances on getting work as it becomes available, like any other person? A. That's right.

Q. Throughout these agreements that you have identified, Mr. Randolph, and the current agreement, the words "journeymen" and "apprentices" frequently appear.

What is the definition which the International Typographical Union has given to those words "journeymen" and "apprentices"?

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Q. (By Mr. Van Arkel) Mr. Randolph, the term "journeyman apprentice" as used in the agreements in evidence, or the

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other documents put in evidence here, do those words mean only members of the International Typographical Union?

A. No.

Q. What do they mean?

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Trial Examiner: Where is the part you say would require journeymen to be members?

Mr. Richman: It is not in the contract *per se*, but the general laws, in Section 10 of Article 5 on page 115 of General Counsel's Exhibit 4, indicate that.

Trial Examiner: Your question is what?

Mr. Van Arkle: My question is: What do the terms "journeymen" and "apprentice", as used in the agreements which are now in evidence and in the other documents which have been identified by the witness, mean.

Trial Examiner: I will let the witness answer the question.

A. The term "journeyman" means anyone who is found

competent to perform the work of a journeyman, and an apprentice is one who has been formally registered as an apprentice and is subjected to the training period that will

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eventually cause him to become a journeyman.

Q. Does it have any reference to union membership or non-membership? A. It does not.

Q. You have identified here, Mr. Randolph, the agreement with the New York Publishers' Association, which agreement provides for the setting up of a joint employer-union committee on competency.

Are you familiar with the practice that has been pursued under that agreement in New York City? A. Yes.

Q. What has that practice been? A. It provides the following out of the procedure mentioned in the contract, and the final provision of it involves the testing of competency of those who claim to be journeymen and seeking work in the composing rooms.

Since the agreement was first made, there have been some fifty applicants who were non-union men claiming to be journeymen and seeking work. Of the fifty, approximately half passed the examination at the school maintained by the employers and the union, and of that half they all made application to join the union.

The union accepted all but three. All three appealed to the executive council of the International Typographical Union, as is permitted under our laws, and the council

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reversed the local union on two of the cases and they were therefore admitted. The third had committed a crime against the union that is hardly forgiveable, and the local union refused to accept him as a member, and the council sustained the local union's action.

However, that individual is still working, and began working immediately after he passed the examination and is still working in a union shop in the city.

Q. As a journeyman? A. As a journeyman.

Mr. Richman: Might I inquire whether we are talking about mailers now or people in the New York Typographical Union No. 6?

Mr. Van Arkel: We are talking about the operation of these clauses of these agreements.

Mr. Richman: Which agreement specifically? We are dealing here with the Mailers' contract.

Trial Examiner: Does your answer have reference to the operation of the agreements in evidence now?

The Witness: Yes. I am speaking particularly of the Typographical agreement, and undoubtedly will speak about the Mailer agreement as I am asked.

Trial Examiner: Any further clarification you can bring out on cross examination.

Mr. Richman: Yes; but when we talk of agreements, I

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would like the record to show which ones we are referring to.

Q. (By Mr. Van Arkel) Did any of the twenty-five persons who failed to pass this competency test. Mr. Randolph, lodge any complaint that the examination was unfair, or that they had had been discriminated against in any way? A. None did.

Q. These were all non-union men who you say took this examination? A. Yes.

Q. By whom was this examination given? A. It is given by the instructors of the school that is maintained

for the training of apprentices on machinery. The school is maintained by the employers of both the newspaper and commercial fields, and the several unions in the printing crafts in conjunction with the City of New York.

Q. Is the examination that is given these applicants for work the same examination that apprentices are required to pass in order to become journeymen members of the I.T.U.? A. Yes.

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Q. (By Mr. Van Arkel) Mr. Randolph, does the agreement in evidence with Mailers' Union No. 6 contemplate the same type of procedures as you have described with reference to the contracts covering the printer members of the I.T.U.? A. Substantially so, yes.

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Q. Mr. Randolph, you previously identified the instructions and advice which were issued pursuant to the injunction.

Specifically, do those instructions provide, "The following clause is not prohibited by the decree: It is agreed that all foremen of composing rooms shall be members of the union in good standing"? A. Yes.

Q. Were you advised at the times these instructions were issued that this particular injunction had the approval of the office of the General Counsel? A. Yes.

Trial Examiner: You are referring to Intervenor's Exhibit No. 3?

Mr. Van Arkel: Yes.

Q. (By Mr. Van Arkel) At the time that these instructions and advice were issued, did the oath of membership in the union require that union members accord a prefer-

ence to other members of the International Typographical Union in employment? A. Yes.

Q. Was that matter litigated in the cases which we have been discussing? A. Yes.

Q. Subsequently, was it then alleged that this required discrimination in hiring?

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A. It was?

Q. Subsequently was that changed? A. It was changed.

Q. Do you recall when it was changed? A. I think in 1953; but subsequent to that, while the litigation was in progress, we sent out instructions that such an obligation on the part of foremen or members did not apply because of the Taft-Hartley Law.

Q. I would like to show you this little pamphlet headed "Changes in the Laws Adopted by the 90th Session of the International Typographical Union," and specifically, at page thirteen thereof, the paragraph beginning at the bottom of the page.

Is that what you had reference to? A. Yes.

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Q. (By Mr. Van Arkel) Mr. Randolph, I note that the matter which you have identified is included in the report of a committee on collective bargaining policy.

Would you tell us what the committee on collective bargaining policy is? A. It is a committee appointed by me at each convention over which I have presided since 1947. The function of the committee is to keep abreast with everything that has transpired in our relations with the employers, and particularly with respect to the legality of any such relations.

Q. Was this report submitted to the 90th Convention of the International Typographical Union? A. It was.

Q. Was it adopted by the delegates to that convention? A. It was.

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Q. (By Mr. Van Arkel) As amended, Mr. Randolph, was the oath of obligation that which presently appears in Article 12 of the constitution? A. Yes.

Q. That is already in evidence; is that correct? A. Yes.

Q. Under the practice of the International Typographical

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Union, I believe it is customary, as has been testified to here, to include in contracts a clause that matters not covered by the contract shall be covered by the general laws of the I.T.U.? A. That's right.

Q. Any particular general laws? A. No. The general laws of the I.T.U. provide certain maximums, minimums and certain directions to accomplish things by contract and certain restrictions on the work day and so on that have been over the years the minimum conditions under which a union shop will operate.

Q. I will come to that in a moment, Mr. Randolph.

Specifically, I take it, however, that since 1953, the oath of obligation of membership has contained no provision requiring members to give preference in employment to other members of the International Typographical Union? A. That's right.

Q. Has it been traditional in the printing industry and in the mailing industry that foremen be members of the union? A. Yes.

Q. From your experience, what, in your judgment, is the reason that this has been traditional? A. Besides just having begun that way, it is necessary for the satisfaction of the union that the one man who directs them knows the craft, and that he is not prejudiced against

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union people, and that when his judgment is exercised—for instance on discharging our people—they will feel that it was by someone who knows what he is doing instead of doing it through prejudice.

Q. Is it an important part of the foreman's duties that he be familiar with the general laws of the union? A. It is, indeed.

Q. Under the practice that is followed in composing and mailing rooms, does the chapel chairman take up any asserted violations of the contract with the foreman? A. Not in the last half-dozen years. He used to do that, but now he reports to the president of the union any violation of law or contract that he observes, and then it is up to the president of the union to try to straighten it out if anything is wrong.

Q. With the foreman? A. With the foreman initially, and if not, with the employer.

Q. In order for a foreman to discuss these matters intelligently with the president of the union, it is necessary that he have some knowledge of the general laws of the International Typographical Union? A. He should not only have a knowledge of them, but their historic significance, and he is in a position where psychology plays a large part in how everyone gets along.

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A union man simply could not be happy working for a

non-union foreman who they know is anti-union because he is non-union.

Q. Has it also been tradition in the industry that the foremen are entrusted with the responsibility of doing the firing and hiring? A. That is correct.

Q. Has the I.T.U. in these last years sought and obtained contract clauses providing that the foreman shall do the hiring and firing? A. Not only in the last few years, but it is historic.

Q. What, in your judgment, are the reasons why this responsibility in the printing trade has been given to the foremen? A. It is from both angles. In the first place, there is one authority to be responsible, and that one authority is between the men and the employer, and there is no passing the buck. As the employer's representative, he hires and fires; therefore, the employer is responsible for his acts.

Not only that, but the employer has generally recognized not only the fact that one man should have the responsibility, but that he be a union man.

Q. Did the order of the Board which was enforced by the Court of Appeals contain a provision forbidding the I.T.U. from restraining or coercing employers in the selection of

foremen? A. Yes.

Q. Has it ever been asserted that the I.T.U. has been in contempt of that decree? A. No.

Q. To your knowledge, has it ever been necessary, or has any subordinate local of the I.T.U. attempted to restrain or coerce employers in the selection of foremen? A. No.

Q. Have employers generally been willing to hire union foremen, and to give them the task of hiring and firing? A. Yes.

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Q. (By Mr. Van Arkel) Would these matters be called to your attention if they occurred, Mr. Randolph? A. There hasn't been any that occurred. Our old history is grounded in the fact that the foreman is the one to hire and fire. Our members have even been disciplined for going over the head of the foreman to somebody in the office.

Q. There has been reference made here, Mr. Randolph, to the clause which appears in the contract between the

Publishers and Mailers' Union No. 6 in Section 24, which I would like to read to you.

"It is understood and agreed that the general laws of the International Typographical Union in effect June 1, 1957 not in conflict with this contract or with Federal or State law, shall govern the relation between the parties on conditions not specifically enumerated herein."

First, has such a clause been the usual practice over the years in agreements between subordinate local unions and employers? A. That clause has been in its present form generally since the Taft-Hartley Act was adopted.

Q. Prior to that time, had a similar clause been contained in agreements? A. Yes, without reference to the civil law, because there wasn't any at that time.

Q. To your knowledge, when did such a clause first come into general use? A. In 1948.

Q. I mean the prior clause? A. That was just one of those things that was historic in itself. To understand that, I may point out that in the earlier days there was no

collective bargaining. Our union is over 105 years old, and at that time there was no

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collective bargaining.

The union simply adopted a scale of prices which its individual members would enforce individually wherever they worked, and they would receive so many cents per thousand of type, or they didn't work. The laws of the union, including the scale of prices, was the complete and total scope of their wages and working conditions.

As the industry grew, as it became more specialized, and the linotype machine was invented, the business became of such a volume that it was to the interest of the employers to have a more stable scale of prices than at the will of the union simply to change it at a union meeting.

They requested the union to agree that certain scales would be in effect for a given time in order to enable them to conduct their business more orderly and be assured of their costs.

So along in the early days when the processes of collective bargaining began, there were very few regulations besides the operation in the composing rooms of union laws governing their working conditions and regulating each other in the shop.

The gradual addition of more and more sections to a contract prevailed and kept growing because of the growing of the industry and the diversification of the industry into different fields.

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So that in the matter of stable conditions, which were good for the union as well as the employer, more and more working conditions were set out in the contract, but al-

ways, throughout our entire history, the laws of the union were accepted as governing the working conditions other than those specified in the contract.

Now, that brought about many complaints about law books so thick we don't know what is in it, so in 1931 we—

Q. Recodified? A. More than that. What we did was to separate from the book of laws such sections as had anything to do with working conditions, and it might be in any way affecting an employer's interest.

We put in the constitution the basic and fundamental laws; in the by-laws, the more numerous laws applying to our internal operation. In the general laws, only those things that governed wages, hours, working conditions, to which we ask employers to subscribe as being the essence of the union shop.

The general laws were found to be a very small number of pages out of a two-hundred-page book, and it is easily identified and easily kept track of.

They represent in part those things which have already been established by collective bargaining, and if a law is changed, it means that a basic and fundamental change

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is made, that the union will insist on getting in the remaining contracts after it has been largely established already in other contracts.

In addition, the general laws has a number of directions to local unions to propose in their proposals to employers, certain kinds of improvements which they hope to get, and obviously if they ever accomplish it on a large scale, then instead of proposing it, they might say that no contract hereafter shall be signed without that in it.

That is one of the ways in which progress is made slowly instead of disastrously in an attempt to be quick about it.

Q. How are the laws of the union adopted, Mr. Randolph? A. A constitution may be adopted only by referendum vote or changed only by the referendum vote. By-laws may be made by convention or by referendum vote. The general laws may be made by convention or by referendum vote.

The membership retains the authority to change any law by a referendum vote, and a referendum vote may be called by 150 subordinate unions petitioning for a vote on any change.

If that proposed change is in proper form, the officers have to submit it to a referendum vote and the membership specifies as to what the local laws are to be.

Q. How frequently are conventions held?

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A. Every year, except for war or pestilence or something.

Q. How are the delegates to the convention selected? A. By referendum vote by the members of each local union.

Q. Is it correct, then, that the general laws of the union may be changed only by the vote of the delegates at a convention, or by secret referendum ballot of all the members? A. That's right.

Q. I take it a change in the law does not mean that that is automatically put into effect, does it? A. No.

Q. The employers still have to agree to or consent to the change that is thus made by the law? A. That's right.

Q. If they won't agree, I suppose the union's only remedy is to strike to get that change? A. That's right; or go along without it.

Q. This clause which I have read to you states, "in effect January 1, 1957."

Has it been general in these clauses to apply those laws as they may have been at the time the agreement was entered into? A. I don't understand you.

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Q. I say, is it the custom usually of these clauses to provide that the laws as they exist at the time the agreement is entered into shall be applicable? A. During the life of that contract, yes.

Q. And then, if there is a subsequent contract, that date might be changed? A. Right.

Q. I note that this contains a provision that the laws of the International Typographical Union shall not be submitted to arbitration.

Has such a clause been common? A. It has ever since approximately 1900. Its origin is in the fact that in 1901 there was an International arbitration agreement entered into between the International Typographical Union and the American Newspaper Publishers' Association whereby local unions and publishers in any given city might arbitrate their differences over wages, hours, and such working conditions as were not governed by the general laws of the union.

In order to prevent any change by an arbitrator's whim of those conditions, it was agreed that the laws of the union won't be subject to arbitration.

Mr. Richman: By "laws," Mr. Van Arkel, are you referring to all the laws or the general laws?

The Witness: In those days, it was all the laws,

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because we hadn't separated them; we found them scattered through. But since 1931, it has been the general laws.

Mr. Richman: Thank you.

Q. (By Mr. Van Arkel) Do all the general laws of the International Typographical Union, Mr. Randolph, have a valid scope of application? A. Undoubtedly.

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Q. (By Mr. Van Arkel) Are you a member of the bar, Mr. Randolph? A. Well, I don't know how to take that. I was given one of those certificates that says I might practice law in Illinois back in 1921. It is very technical as to whether I ever practiced law or not. I suppose I could be sent to jail if I didn't have the certificate because I did have one paying client.

I earned my living at the printing business, and therefore the major point is that I am not a lawyer, but I have been accused of being one and I have sometimes said that I had lived it down.

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Q. You have never been disbarred or suspended, in any event, Mr. Randolph? A. No.

Q. Does the I. T. U. have subordinate local unions in Canada? A. Yes.

Q. Is there, so far as you are aware, any legal impediment to the application of the laws of the I. T. U. in Canada, all of the laws? A. There is no impediment.

Q. Does the I. T. U. have members who are employed in enterprises which don't affect interstate commerce? A. Yes.

Q. Are there, so far as you are aware, any legal impediments in most states of the union to the application of all of the laws of the International Typographical Union in those shops? A. No.

Q. You testified, Mr. Randolph, that there had been a change made in a clause which I read you from Section 24 of Mailers' Union No. 6 after the passage of the Taft-Hartley Law.

What was that change? A. What section is that?

Q. Section 24. I will show it to you.

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Trial Examiner: Are you referring to a specific exhibit?

Mr. Van Arkel: Yes; General Counsel's Exhibit 3, Mr. Examiner.

The Witness: What is the question?

Q. (By Mr. Van Arkel) The question is this:

Was the change made in the clause after the passage of the Taft-Hartley Act? A. Yes.

Q. What was that change? A. The addition of the words "not in conflict with this contract or federal or state law;" particularly the words "not in conflict with federal or state law."

Q. I show you, Mr. Randolph, a document headed "Agreement between Publishers' Association of New York City and Mailers' Union No. 6, Effective May 7, 1946," and ask you to examine Section 25 of that agreement.

(Witness examines document.)

A. Yes, sir.

Q. Would you read into the record the language of that clause? A. Section 25: "Both parties agree that their respective rights and obligations under this contract will have been accorded by the performance and fulfillment of the terms and conditions thereof, and that the complete obligation of

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each to the other is expressed herein. It is understood and agreed that the general laws of the International Typographical Union in effect January 1, 1945, not in conflict with this contract, shall govern relations between the parties on conditions not specifically enumerated herein."

Q. Was that the type of clause which was used before passage of the Taft-Hartley Act? A. Yes.

Q. Subsequent to the passage of the Act, was the clause that was used similar to the one in General Counsel's Exhibit 3? A. That's right.

Q. Mr. Randolph, you have already identified as Intervenor's Exhibit 4 the changes in the laws which were made at the 1948 convention of the International Typographical Union.

I call your attention to the language: "The executive council, with the approval of your committee, has made it clear generally that only those union laws not in violation of the Taft-Hartley Act or State Anti-Labor Statutes are recognized as valid by not asking that any matter be governed by union laws which are in violation of any Federal or State Law."

I will ask you simply this:

Was that report of the committee on collective

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bargaining policy adopted by the 1948 convention? A. It was.

Q. I call your attention again to the book of laws, Mr. Randolph, particularly to Article 14 of the general laws.

I wonder if you would be good enough to read into the record the provisions of Article 14 of the general laws. A. Article 14, Public Law, Section 1: "In circumstances in which the enforcement or observance of provisions of the general laws would be contrary to public law, they are suspended so long as such public law remains in effect."

Q. Can you tell us when that change in laws was made? A. I think around 1952 or 1953, I am not certain.

Q. I show you the Typographical Journal for September, 1953, particularly page 80-S, and ask if you would read

into the record the material appearing under proposition No. 134.

First, let me inquire, Mr. Randolph: Does that contain the report of the proceedings of the convention of 1953? A. It does.

Q. Is that what you are now reading from? A. Yes.

"Partial report of the committee on laws, Proposition No. 134 by the committee on laws. Amend general laws by adding new Article 14 in italics as follows: Article 14, Public Law, Section 1: In circumstances in which the

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enforcement or observance of provisions of the general laws would be contrary to public law, they are suspended so long as such public law remains in effect. Committee reports favorably with the following comment approved by the committee on collective bargaining policy. The report of the committee on propositon No. 134 was adopted."

Q. Does that mean that that became part of the general laws of the International Typographical Union? A. It does.

Q. Turning to page 79-S, Mr. Randolph, I wonder if you would read just this one paragraph from the report of the committee on collective bargaining policy. A. "Your committee reports favorably on Proposition No. 134, referred to it by the committee on laws. Our right to adopt laws and to insure means for their enforcement has been upheld by the Courts, but under Federal and State statutes and outstanding decrees, the enforcement or observance of certain laws under some conditions may constitute a violation of law or a decree. This proposition makes it clear that in such circumstances the enforcement or observance of such general laws is suspended."

Q. Mr. Randolph, has the International Typographical Union undertaken to distribute to subordinate local unions sample constitutions and by-laws for such use as they might care to make of them?

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A. Yes, principally for new unions.

Q. I show you such a document with a flyleaf attached, and ask if that is the document that you distributed to such local unions. A. Yes, it is.

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Q. (By Mr. Van Arkel) Mr. Randolph, I have another copy here of a booklet headed "Sample Constitution and By-Laws."

Is that another form of the same document?

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A. Yes, it is.

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Q. (By Mr. Van Arkel) Mr. Randolph, did you cause to be distributed on or about December 18th, 1950, a document headed "Important Notice to Officers and Scale Committees of Subordinate Unions"? A. Yes, sir, I did.

Q. Is the document which I have just handed you a copy of that notice? A. Yes.

Q. Was it, in fact, distributed to all officers and scale committee members of subordinate unions?

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A. And all chapel chairmen.

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Q. (By Mr. Van Arkel) Under the by-laws of the International Typographical Union, Mr. Randolph, or under any of its other laws, are you or is your office required to re-

view contract proposals and contracts before they are made final? A. Yes. Local unions must send to my office any proposed contract for review before they are presented to employers in order that we can screen it and keep it in accordance with our own laws and with civil law.

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Then, after negotiations they must again submit it for screening to see that it is still in compliance with our laws and with civil law before they may finally agree to it and sign it with the employer.

Q. Has your office, in fact, done that since the passage of the Taft-Hartley Act? A. It has done it since and before.

Q. Have changes been made in contract proposals or in contracts because in your opinion, or in the opinion of those on your staff, they contained provisions which were contrary to the terms of the Taft-Hartley Act? A. Yes.

Q. Is that one of the purposes for review? Is that one of the reasons for reviewing such agreements? A. Yes.

Q. Particularly since the order of the Court was entered by the 7th Circuit, has this, in your judgment, been something which was required in order to make certain that that decree was complied with? A. Yes.

Q. Would it be possible for the I. T. U. to spell out exactly what laws of the I. T. U. might be validly applied, and under what circumstances? A. No.

Q. In practice, you have identified now various

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instructions that certain laws of the I. T. U. mean that certain additions might not be applied.

In practice, how is that matter taken care of, if you know? A. Say that again.

Q. I mean, what is the practical way by which this instruction that laws of the I. T. U. are not to be applied where they would conflict with federal or state law? How is that practice handled? A. Bearing in mind the fact that at the beginning of the operation of the Taft-Hartley Law every union had to submit its proposed contracts for review—bearing that in mind, you will see that at that time we had a great deal of difficulty sifting out all of the provisions that couldn't be applied.

Once the local unions had a contract that was approved and operating within our law and within the civil law, it was fairly easy for them to keep going that way because not very many changes are made in these contracts as we go along. The employers seem to be allergic to making changes in contracts, and once they have one they want to keep it forever.

Q. Let me assume a set of circumstances, Mr. Randolph. Let us assume that a certain matter was not covered by an existing agreement between a subordinate local union and a

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group of employers, and that the parties had reference to some section of the I. T. U. laws to dispose of the problem, and under the particular circumstances presented, such a law couldn't validly be applied.

What would be the machinery by which that problem would be taken care of? A. The union would, perhaps, against my orders, call me up and ask me what to do about it.

* * *

Q. (By Mr. Van Arkel) Would the publishers be able to assert in such a situation that the application of the law in those particular circumstances is not lawful? A. They could.

Q. Could the local union then seek your advice, or the advice of the attorneys for the union, as to whether or not it might under those circumstances be validly applied? A. They could.

Q. Has that, in fact, happened? A. Yes.

Q. To go back to your earlier answer, you said it would

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be quite impossible to indicate all the circumstances under which laws of the union might or might not be validly applied.

Could you give us the reason why that would be impossible? A. The industry has become so complex, and the application of state laws as against federal laws, and the difference in the unions themselves is great as between a small union and a large union—when you consider that the general laws that we are talking about are kept at a minimum, even that is one based on principles and you couldn't make a detailed revision that would fit every circumstance; you just couldn't do it.

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Q. (By Mr. Van Arkel) Mr. Randolph, there has been a good bit of reference here in the testimony to the priority system.

Would you describe to us in a few words what the priority system in the printing and mailing industry traditionally means? A. Briefly, it is simply that the journeyman, the oldest

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in service, has priority over those with less service to him. It runs all the way down. It applies to journeymen only. Apprentices don't have priority, and they only establish it as they become journeymen.

The laws of the union since 1892 have provided for that condition. The laying off of journeymen puts them back on the slip board, as we call it, or the list of subs. If the force of regulars is increased, those who have been laid off are hired in the reverse order that they were laid off. In other words, the oldest substitute is the first one to get a situation.

Q. Mr. Randolph, you mentioned "slip board." I would like to show you this photograph.

Is that a photograph of a slip board? A. Yes. This is a mechanical arrangement, the same as a priority list, except that it is divided up into classifications of work.

Q. What slip board is this a photograph of? A. The New York Times, I believe.

Q. Looking at the left-hand column, I note it is headed "Proof Readers' Night," and then beneath that are nine slips.

What would those nine slips indicate to you? A. That would indicate the priority standing of those nine men. The slip on the right side of that column is the name of the substitute, and the column on the right-hand side

of the first column there is for the indication of hire.

You will notice there are five slips in those slots. The writing is indistinct, except on the first and last, but that undoubtedly has the name of a regular situation holder who is hiring that man for a certain day. He is then called a sub.

Now, the other subs who are available may be hired by regulars who want to get off, or they may be hired by the office; in which case the foreman would go over and put an indication in that slot that he is working that night for the office.

In that case, they would be called technically an extra; whereas if he is working for a regular situation holder, he is called a sub.

You will notice a lot of blanks in there where there is no names, and then you will find some more slips near the bottom. As a matter of fact, for convenience, the blank spaces are left in the middle so that when the foreman lays off some situation holders, they don't have to move down to that portion, or if there are more journeymen that show up for work than subs, he would move the bottom part upward into the blank space. It is for convenience of the chairman not having to move the whole bunch of slips every time he revises it.

You will notice the proof readers in the next group

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is the lino machinists' night, and the next one is the operators' night, and there are two full columns there of spaces, but the first column is about the only sub showing up. There is one on the second column, too.

You may notice that there are two on the right-hand side of the second column with nothing on the left-hand side. No doubt, those two subs pulled their slips, as we call it, and left town or left the office; they are gone. The chairman, in going over the board, will simply take out the two blank slips.

Now, should it be that those subs had violated the ethics of our union, and just pulled their slips and said to hell with it, and left regardless of whether there were slips opposite their name or not, the chairman would see to it that somebody filled those jobs.

You will see the little tabs alo g there on each one, the little metal tabs in the middle. Among those subs who are available at that time, he would take that little metal tab,

take them all off, and put them in a hat. He would permit the subs then to draw as to which one would get that night's work. They do that as a matter of seeing to it that there is no discrimination.

Now, anybody that is a journeyman that shows up, his name will go on that slip board at the bottom, and by dividing it up into these classifications, it indicates that a

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man claims priority and is competent as a proof reader, for instance, or an operator, or a machinist, and so on. He claims competency in that class of work, and if the foreman hires him, he proves that he is competent.

Now, the specialization habit may be that even though a man is competent in four or five of these classifications, he likes one. He will slip up under that and he will in that way indicate to the world, "Well, you can fire me for this, but you cannot fire me for anything else." It is a way in which the natural law of desire works. Each man will find his place where he likes to work best and he will stay with it.

However, in the case of producing a force of extras, if a man, for instance in this first column of proof readers, is laid off of his regular situation, if there is other work in the office he is competent to do and which he is willing to stand on, he can claim that. Then that man would then be laid off.

So the priority works in a public fashion and everybody can see if there is the slightest bit of unfairness anywhere, or somebody isn't hired in his regular order, or whatever. It is a picture of the priority list and a picture of the hiring, so that anybody can look at it and knows what goes on every day of the week.

That is the same, as I say, as this exhibit of a

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priority list that you have here except that it is split up into these classifications for the purpose of hiring. The foreman hires from that board.

The chairman also has, or should have—this may be one of our laws that a lot of them don't live up to—but the chairman should have a complete priority list showing all of the members and all of the journeymen, no matter who they may be, in the order of the date of their hire, so he can look at that, if somebody claims that "I have been laid off. I want to work over here"—he will look up there and see if he has priority over Jim, and if he has, okay, he can do it.

This has been going on for a long time. I first noticed it forty-five years ago when I became a journeyman. This slip board method is so old that it goes back perhaps as far back as 1892, when the first priority law was adopted.

It is the means whereby every journeyman can look at the board and see what goes on. If there is any finagling, he catches it right away, and they just don't allow it.

So the means, as you see, satisfying the needs of the office for these dozen classifications here, is automatically taken care of and a foreman can look at the board. If there are no subs available, he has four regulars on the machines, as they say, and some guy has to get off. "Nothing

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doing: you got to work."

Unless he can find a machinist sub, he has to work. That is his obligation; that is his duty. He can't jump without losing his priority entirely. If they take your priority away, they fire you.

That is a visual picture of how our system works. As I say, it is confined to journeymen.

Since Taft-Hartley, anyone that comes in and says he is a journeyman printer, if he is then in this city, as I have testified, he is tested first to see if he qualifies as a journeyman, and if he does, he may apply for membership. We like to have more members in the union if they are the right kind of people.

We have no trouble about getting them into the union; it is a privilege and an honor to belong to the Typographical Union, and the benefits, the pension and the mortuary fund and the union printers' home, and the various benefits that we have besides the economic advantages, is enough so that anybody that is a printer that can see a chance of working in a union office, he wants to join. We have no trouble about that.

We have to screen them as to competency, and the employer doesn't want a man on that board that isn't a journeyman because he doesn't want to pay the wages unless the man can deliver. Therefore, he has to be tried out.

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It would reduce the quality of our membership tremendously if we just took the word of everybody that said they were a printer. There are a lot of people that are half printers, and it would immediately reduce the ability to to get out a paper on time, as we have to do.

There is no discrimination about it either before or after Taft-Hartley, because that is the mechanical means whereby we prevent discrimination. A non-union person on the bottom of that list, or any other place on that list, can immediately see whether he is discriminated against. That is his spot. Anybody can see it.

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Q. (By Mr. Van Arkel) Mr. Randolph, do I understand it to be your testimony that this system which is illustrated by this slip board is also the system of hiring which is used in mail rooms? A. So far as I know, the mail rooms—we will say this mail room in New York has no such slip board. There isn't diversity of specialization in the mail room that would call for that to be used.

In other words, the priority list is sufficient if you don't run into all of these other complications as to competency in a dozen different ways.

Q. In its essentials, is the system the same? A. The system is identical. It is just a matter of whether the man on that priority list is competent to do the work required of him in the mail room.

Q. As far as the International Typographical Union and its subordinate unions are concerned, do the priority laws

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apply to anyone other than journeymen? A. They apply to every journeyman, but no others.

Q. Do they apply, for example, to casual help hired on an infrequent basis? A. No. They cannot apply to them, as I think you will see by studying this system.

In the first place, they are outside of our contracting ken, and they are outside of the scope of the union law. They are, of necessity, on a Friday and Saturday night in a lot of places, and there is very little the local union can do about it except try to get the scale for them to keep from having their work undercut.

They are just casuals and are solely a means to an end, namely, to get the paper out when there are no other people around to get it out.

Q. Where the slip board isn't used, is it customary to post a priority list? A. It should be posted in every chapel, mailer or printer alike.

Q. Is that list equally available to representatives of management, representatives of subordinate unions, and journeymen and others who are employed? A. It is posted and available; it is posted in a conspicuous place where anybody can see it.

Q. That is the definitive record by which priority and

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hire is determined: is that correct? A. It is the question of how priority is determined. The hiring is determined by the particular competency of the journeyman. In other words, in no place—I think it was tried in Boston, but I don't think it goes there.

In no place is there straight hiring in priority order, because if he wanted to hire a machinist who happened to be near the bottom of the list, and he had to hire in priority order, he might have to hire a dozen linotype operators and proof readers before he ever got to the machinist, and therefore he would have a surplus of useless help.

The hiring is done in priority order, modified by the ability of the priority man to do the work in question at the time.

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Q. (By Mr. Van Arkel) From your experience, and in your judgment, Mr. Randolph, does this priority system produce an equitable system of hire? A. It is our only intention for the purpose, and, as I said, it was long before Taft-Hartley. It was necessary to keep the foreman from discriminating one union man against

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another.

Q. Have there been such discriminations before the priority laws of the union were adopted? A. Yes, there were.

Q. Is this priority system an effort to correct such discrimination? A. It is.

Q. Is the system of priority in hire which you have described an aid to the system of granting traveling cards? A. It helps considerably both ways; that is, the man with the traveling card can come in and deposit his card and put his slip on the board for whatever work is available in that priority order.

It is a quick introduction to work, and he can come in and look at the board. If there are a lot of subs, he can ask, "How are you fellows doing?" especially the last sub or two; "What are you getting?" and if it isn't satisfactory, he goes someplace else where there are fewer subs on the board, or to some other city.

In other words, he can come into town and see if there is work, and if there isn't, he can move on.

Q. Is it your testimony that a non-union man who proved that he was a journeyman would have equal rights with union men in sliping up on the board and in priority of hire? A. He does have that right.

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Q. Mr. Randolph, is it a characteristic of the newspaper industry that the number of men required at any given time may vary widely from day to day and from week to week throughout the year? A. That is true, it does vary.

Q. Does this slip board system provide a flexible means whereby the requisite number of persons can be available at all times to turn out the newspaper? A. It does provide that kind of a system.

Q. There is one matter I neglected to ask you about, Mr. Randolph

In discussing this question of the foreman being a union member, does that have advantages as far as the members of the I. T. U. are concerned? A. Of course.

Q. In what respect? A. I think I answered that once before, that they—

Q. Perhaps I did cover it. A. They have the knowledge that at least the foreman isn't going to discriminate against them because they are union men. They have the further knowledge that he is a competent man, well versed in the trade processes, and he is most frequently a man who has been promoted up through the composing room, one that they know is competent.

The whole history, tradition and psychology of the

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situation is that if you weren't a union man, they just wouldn't work there. That is the feeling of the union people, and it is a valuable asset to the employer to see that he has a harmonious composing room.

Q. With respect to these casual men, men who are not journeymen nor regular substitutes, does the I. T. U., or its subordinate local unions, or its members, have any interest at all in the manner in which they are hired, or the order in which they are put to work? A. No.

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Q. (By Mr. Van Arkel) Mr. Randolph, is the executive council called on of the International Typographical Union from time to time to decide disputes concerning the relative priority standing of members of the International Typographical Union?

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A. Yes, frequently.

Q. In the course of those rulings, what position has the executive council taken with respect to priority of men who have full-time employment at some trade other than the printing trade? A. It is repeatedly ruled, over a great many years, that such members have no priority in any office.

Q. How are they classified? A. They are classified as not at the trade.

Q. Under the rule of the union, such men are not entitled to assert any priority? A. That's right.

Mr. Van Arkel: That is all.

CROSS EXAMINATION:

Q. (By Mr. Richman) I think it has been clear in your testimony, Mr. Randolph, but I would like to make sure again for the record, that this priority system that you have talked about is a priority system as between members of your union only? A. No; it is a priority system that operates regardless of whether it applies to a member of the union or a non-member.

Q. To your knowledge, are there any non-members in New York City who are included in the priority systems of their respective shops?

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A. Yes.

Q. In the Typographical locals, or in the Mailers' locals? A. I know of one briefly referred to a while ago in the Typographical.

Q. One individual? A. One, yes.

Q. Do you know any in the Mailers' Local? A. No.

You are speaking of journeymen, are you?

Q. I am speaking of individuals on the priority list. A. In view of the fact that the priority list only shows

journeymen, I want to make it clear that I know of no mailer on the priority list who is a non-union man.

Q. Isn't it a fact that it is the chapel chairman who is charged with the responsibility of maintaining the priority list for his particular chapel or shop? A. It is the duty of the local union to see that a priority list is maintained as provided in Section 2 of Article 10 of the general laws.

It is an obligation on the local union to establish a system of registering and recording priority standing of members in all chapels which shall be conspicuously posted or kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand

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as recorded.

Q. As a matter of practice, doesn't the local union provide that the chapel chairman shall carry out this function? A. He usually does, yes. He maintains the priority list in each chapel. I would say that the local union does so provide.

Q. And the chapel chairman is the individual who will notify the foreman of any changes in the priority list? A. No; he doesn't have to bother about that. All he has to do is keep the priority list in order.

Q. Why doesn't he have to bother about it? A. If the foreman should hire anybody out of priority order, that member would go to the chairman and point that out, and the chairman would go to the foreman and the foreman would correct it.

Q. I think you have testified that a man can get a traveling card and go to another city and receive a working card from the local in that city, and then take this working card and throw it in at a particular shop; is that correct? A. He would deposit it with the chairman of that shop.

Q. Would he, by depositing that, indicate to the chairman that this man desires to work regularly at the shop? A. That's right.

Q. The chairman then would notify the foreman that so-and-so has deposited his card; is that correct?

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A. The way it works is that the man's slip would go on the slip board.

Q. I am speaking about mailers. You have been here and heard the testimony of the procedure. Let's confine ourselves to mailers, please.

Isn't it true that the chapel chairman then would notify the foreman that so-and-so has deposited his card and claims priority as of this particular date? A. Well, I can't say that he would. As a chapel chairman of bygone days, I can only say that the slip on the slip board made it unnecessary for me to do anything about it.

Q. That is because the slip on the slip board was inserted by the person coming into the shop himself; is that right? A. The chairman would put his name in the slip board, and it is visible there. The foreman can see it there, and if he wants to hire him, he can.

Q. In cases where the foreman doesn't have a slip board, but has a list, a priority list, how would the foreman learn of a new individual depositing his card and coming into the shop? A. It is likely that the chairman would introduce him to the foreman, if he wanted to be courteous about it. He would say, "Here is a man who can do this and so."

Q. And, in fact, isn't that normally the procedure that

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is followed? A. I can't say that that is. I am not in that office. If I were in such an office, I would extend that courtesy.

Q. Isn't it a fact that an individual coming from another city and having a working card from a local can work at a shop without putting his card in, in order to more or less try out the shop beforehand? A. No; no union man would attempt to work without depositing his card with the chairman or with the local secretary.

Q. When you say no union man would attempt to work— A. Without first depositing his card with the chairman and getting—

Q. Without depositing his card with the chairman and what? A. Becoming known that he is there to work.

Q. You have heard testimony that in the Daily News card men from outside the News come in and seek work at the Daily News.

These men, to your knowledge, don't deposit their cards with the chapel chairman? A. They couldn't if they had their card deposited in another shop. Their priority is in another shop.

Q. They are just appearing for whatever work they can get at the Daily News?

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A. They may appear there on request of the local officer to fill union obligations to supply help. Sometimes men are not hired in one shop and they will then ask them to go to another to meet a requirement of that shop for that particular night.

Q. Don't these men also appear on their own without any specific request from local officers? A. They may if they don't work in their own particular shop.

Q. Taking again the case of a man coming from outside the city and depositing his card in a shop, if there are non-union extras who normally work in that shop, isn't it a fact that this man, when he deposits his card, will be

hired ahead of these non-union extras? A. If by "extras" you mean journeymen—

Q. No, I don't mean journeymen. A. Our regulations only go to journeymen. The testimony I have heard here is completely confusing to someone who is not in the industry. I can understand it, but I don't want to get crossed up on this record.

If you mean by "extras" these casual employees that come in two nights a week, I would say that the foreman would naturally hire a journeyman for the work before he would hire one of those.

Q. Your testimony is also, the reason the foreman would

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do so is because this man is more competent than these casuals, as you call them? A. He is recognized as a journeyman, and we contract for the employer to hire only journeymen and apprentices to do his work. We can't help it if we can't supply enough people, and we can't help it if he brings in this extra group of people from any walk of life to get the paper out.

Q. Isn't it a fact that the item, or the thing that signifies to the foreman that he is a journeyman is his card? A. No. The fact of his being a journeyman is established by proof in the means provided for in the contract.

Q. I notice that the contract of the Mailers and the Publishers' Association defines journeymen as falling into one of three categories: "Persons who prior to the effective date of the contract worked as such in the mailing rooms of papers signatory to this contract."

That won't include a man coming from another industry, would it? A. Read it again, please.

Q. "Persons who prior to the effective date herein"—meaning the contract—"worked as such in the mailing rooms of papers signatory to this contract." A. I would say it speaks for itself.

Q. I think we can agree on that.

Now, the second category: "Persons who have completed

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apprentice training as provided in this contract, or have passed a qualifying examination under the procedures heretofore recognized by the Union and the Publishers."

To your knowledge, does New York Mailers' Union No. 6 and the Publishers recognize the standards or the examinations given in other cities of the country? A. I have no knowledge of that.

Trial Examiner: What specifically are you reading from?

Mr. Richman: I am reading from Section 20(b) of General Counsel's Exhibit 2.

Q. (By Mr. Richman) The third category is: "Persons who have passed an examination recognized by both parties to this contract and have qualified as journeymen in accordance therewith."

To your knowledge, do members seeking to throw in their card at a New York mail room have to go through any examination at all? A. I have no knowledge of that.

Q. But you say the card itself isn't the only indication of journeyman status? A. The union card is evidence of journeyman status.

Q. You say it is? A. Whether or not it is accepted by the foreman in a particular shop under this particular contract, is another

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matter. I have nothing to say on that.

Q. To your knowledge, has any question ever reached your desk on the issue of the rejection by a foreman in a New York City mail room of the card of a member who seeks to throw it in? A. I have had no complaints on that. You might say "place it." He doesn't throw it in; he deposits it.

Q. Let's use the word "deposit." A. All right.

Q. Mr. Randolph, this man who seeks to deposit his card in a shop for the first time, is in your opinion—and correct me if I am wrong—more competent to do the work in that shop than the casuals who have been employed in that shop? A. I think so.

Q. Even through a casual may have been employed in that shop on a steady basis for five shifts a week? A. Well, it is too iffy for me to answer with any degree of certainty.

Q. I just want your opinion. A. I couldn't express an opinion on that. The circumstances might be different.

Q. Assume the Daily News situation, where casuals have apparently been working four and five shifts a week. Would this man seeking to come into the Daily News by

depositing his card, in your opinion, be more competent than these casuals? A. Generally so, I would say, yes.

Q. Even though he has never worked in that mail room before? A. I would say yes.

Q. Isn't it a fact that the mail rooms of various newspapers are different in their manner of operation—not their general manner, but their particular details of operation? A. I don't know how detailed or how different the details are. I haven't visited mail rooms for some time.

Q. Do you think that all mail rooms are the same? A. No; I am sure there are differences in the kind of machinery they use.

Q. So, therefore, a man coming into the shop through the deposit of a card might very well be unfamiliar with the machinery used in a particular mail room? A. It is possible.

Q. So in that sense wouldn't he be less competent than a casual who has been working in that shop for quite a long time? A. It is possible, but not probable.

Q. Why do you say that? A. I know just a little bit more about mailing than you.

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do. I answered it that way for that reason.

Generally speaking, mailer members have not always simply been in one shop. Many of them go around to various shops and obtain in their city a pretty good knowledge of the various shops. As you know, they have been working between the different shops even though they are journeymen. So the hypothetical question you asked is rather far-fetched.

Q. I was talking about a mailer coming from an entirely different city, not having previously worked in New York City. A. Again, I can give you no solace on that particular question.

Q. In answer to Mr. Van Arkel's question about one of the reasons for the priority system, you stated that it was an equitable system of hire, creating an equitable system of hire; is that correct? A. That's right.

Q. Isn't it correct to say also that this is an equitable system of hire as between members of the union only? A. No. It operates quite to the contrary.

Q. As far as you know, though, there are no other people in this system in the New York City mailing industry but members? A. Again, you have used some

wide language. I have said that I know of no journeymen mailers who are not members

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of the union in the newspapers in the city. That doesn't preclude there being any. I said I didn't know of any.

Q. Toward the end of Mr. Van Arkel's examination, and I think some time before that, he discussed the reasons or the basis for the union's desire for foremen to be union members. I think you gave several reasons.

Am I correct in assuming that it is your firm belief that if a foreman were not a union member, he would necessarily discriminate against union members? A. Yes.

Trial Examiner: What is that based on, Mr. Randolph? What is your opinion?

The Witness: Well, somewhat on experience; and somewhat on the belief that if a man is not with us, he is against us.

Now, the experience has been that where a non-union foreman has shown up, it hasn't been long until the whole shop is non-union. There have been a number of such cases.

What he does is, he comes in as a non-union foreman for the purpose of raiding the place, and he makes it so miserable for our people that one by one they will get out and leave it. There have been a number of those instances.

On the other hand, our union is entitled to all the

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respect and admiration that any organization in this world is entitled to, and anyone who can't see that, and who is in the industry, in my opinion is very prejudiced against us.

I am completely convinced that any time an em-

ployer brings in a non-union foreman, it won't be long until we have a non-union shop.

Trial Examiner: Thank you.

Q. (By Mr. Richman) What do you mean by a non-union shop, Mr. Randolph? A. One that makes it so miserable for union people that they can't stay there.

Q. What is your definition of a union shop? A. Well, the language of the industry has been corrupted by the Taft-Hartley law.

Q. I understand that to be your sentiments. A. We don't use the word "union shop" any more. I don't, because I don't want to confuse it with the Taft-Hartley union shop.

Q. Before the Taft-Hartley Act came into effect, what was your definition of a union shop? A. A union shop was one employing only members of the union on work processes covered by our jurisdiction.

Q. You say you don't use the term "union shop"? A. I avoid it if possible.

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Q. Do you recall the address you made before the recent convention of your union on August 17th, 1957? A. I talked so much I wouldn't remember any speech I ever made unless I saw it in print.

Q. I read your Typographical Journal. You did make a speech, though, on August 17th; I think that was the opening day of the convention? A. I always do.

Q. Do you recall telling the assembled members: "Since 1944, we have had a nationwide struggle with employers to maintain our general laws as a basis of union shop operations"? A. That is true.

Q. You recall saying that? A. Yes. I have said it a thousand times.

Q. This, then, was a recent use by you of the term "union shop"? A. Did I put "shop" in there?

Q. Yes. A. You didn't read it.

Q. I beg your pardon? A. You didn't read "union shop."

Q. I read: "As a basis of union shop operations." A. That's as we understand it.

Q. Isn't it a fact that you used "union shop" here in the traditional sense, in the pre-Taft-Hartley sense?

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A. That the employer contracts with us?

Q. That you have had a nationwide struggle with employers to maintain your general laws as a basis of union shop operations? A. That means the kind of a shop where the employer contracts with us at the present time.

Q. You have changed, then, the definition of "union shop" by your own words? A. As I said, it has been corrupted. In no sense do I ever want to mean that kind of a union shop that the Taft-Hartley prohibits. The union shop as it is used at any time I use it, means a shop whereby the employer contracts with the local of the I. T. U. for work over which we exercise jurisdiction.

Q. And which work is done by your members only? A. No; there are some non-union men around here and there in union shops.

Q. However, when I asked you whether you used this "union shop" term here in the pre-Taft-Hartley sense, I believe you said that you had, and you admitted that you had? A. I didn't answer that particular question. I didn't say yes to that because pre-Taft-Hartley union shop and closed shop were synonymous. Since Taft-Hartley, they are not synonymous.

Q. However, you told your members that since 1944 you

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have had a nationwide struggle to maintain the general laws as the basis for union shop operations.

In other words, is this the same struggle that is going on from a point prior to the Taft-Hartley to the present day? A. It so happens that in 1944, late in 1944 and in 1945, we had a struggle with the American Newspaper Publishers' Association to maintain the general laws as a basis for union shop operations. The struggle was hardly concluded before the Taft-Hartley Law was adopted and we had it all over again.

Q. You, I assume, are quite familiar with the provisions of your general laws, and you agree with the the sentiment expressed therein and the provisions of those laws? A. I am bound by those laws.

Q. I am looking at general laws of 1955, which is General Counsel's Exhibit 4.

Which one do you have in your hand there? A. These are for 1956.

Trial Examiner: I am showing the witness a copy of the 1955 booklet.

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Trial Examiner: Let me ask the witness this question first:

With reference to the instructions which were issued

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and which have been mentioned several times, to the effect that the general laws shall not apply if

they conflict with public law or various other laws mentioned, can you explain just what that has reference to as regards the Taft-Hartley Act?

Can you give us an explanation as to how that applies with respect to the Taft-Hartley Act?

I am speaking of that section you read into the record a few times.

The Witness: Throughout the book, which applies wholly in Canada, and in other instances, the word "members" is used. In instances where the members should be journeymen, the word "members" doesn't apply. The fact of any journeyman showing up for work and getting the same treatment as union men, is the one thing that is referred to not to discriminate against union or non-union men.

When the clause he read was written, there had been no test of the Act. That was written in 1947, at the 1947 convention, when we thought it was all invalid. But the Courts speak on it from time to time, and they say which parts are valid, and that's that.

We haven't bothered to change that particular paragraph, but it is just for what it says, if there is anything that is invalid, we want it repealed.

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All of our contracts, with virtually no exceptions, have at the end of them that if public law is changed so that previous sections that were taken out because of the Taft-Hartley Law can be reinstated, they will be reinstated.

That is how thorough our fair counter-provisions are understood. Employers have agreed that we

have to take these out now, but if the time comes when we can put them back, we will put them back.

As I say, to pick that out and ask me to tell you which of the Taft-Hartley Laws are bad, brother, I will tell you that they are all bad. The Taft-Hartley Law or the amendments made to the Wagner Act —now, the Wagner Act wasn't so bad, but the Taft-Hartley amendments were all bad.

Trial Examiner: Let me ask you this:

Is it your understanding that this clause means that any general laws which conflict with any or all provisions of the Taft-Hartley Act are thereby being suspended?

The Witness: Yes.

Mr. Richman: To which clause are you referring, Mr. Libbin? Is it the clause at the end of the general laws, Article 14?

Trial Examiner: The one which was read into the

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record several times.

Mr. Richman: That is on page 125. Is that the one you are referring to?

Trial Examiner: Yes.

Q. (By Mr. Richman) Mr. Randolph, you did not, then, also bother to change the part of the general laws which comes two paragraphs below the part that I asked you about, Article 3 on page 108 of General Counsel's Exhibit 4, namely: "There should not be and will not be any attempt on the part of the International Typographical Union or its subordinate unions to violate any valid provisions of law, federal or state"? That hasn't been changed? A. I don't think so.

Q. That is in the current issue of the general laws, too? A. Yes.

Q. The following sentence is also in the current issue of the general laws: "There will continue to be earnest efforts on the part of those unions to achieve conditions and agreements granting the fullest measure of protection and advantage possible under law"?

That is still current? A. Surely.

Q. In response to Mr. Van Arkel's questions on whether the priority laws apply to these casuals, I believe you said no?

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A. That's right.

Q. They are outside the contract, as far as you are concerned? A. That's right.

Q. Is it true that you would regard these casuals as a necessary evil? A. Well, we will say they are necessary. I don't know how evil they are.

Q. The union wants very little to do with them? A. We will say that they are not within the union's contracting scope. They are people who are brought in by the employer to get a job done that has to be done and the union has no way of otherwise meeting that problem with journeymen.

Q. Does the union consider itself under an obligation to supply the particular shop with competent journeymen? A. Regularly, yes; that is, competent journeymen as a regular force. We don't accept unlimited responsibility to try to supply an unlimited number of people in the circumstance for a day or two a week. That would call for a great many that we couldn't supply. We do try to supply a steady force of regular, competent people.

Q. Is that an obligation that exists as a result of many

years of practice in the industry? A. It is also in many contracts, as well as tradition.

Q. The contract between the Mailers and the Publishers'

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Association, I believe, reads, in Section 5 of General Counsel's Exhibit 2, that: "New York Mailers' Union No. 6 was never called upon to supply the office with competent experienced and satisfactory men."

Is it my understanding that this obligation goes beyond the mere calling upon the union? In other words, you don't have to actually call upon the union; the union is under the obligation to supply the shop with the men? A. With regular forces, under that obligation, and it is to its own interest to supply as many as it can for fluctuations of work. It is in the employer's interest, I think, to employ those men.

Q. Wouldn't it be correct to say that it is in the interest of the union to fill all of the regular positions, or positions calling for a regular amount of work, with members of the union? A. Surely.

Q. The union, in fact, attempts to do that? A. Well, I don't know just what you mean by that. It is to its interest to have as many of its members employed as it is possible to get employed.

Q. I believe you told Mr. Van Arkel that it was not possible for the I. T. U. to spell out which of the general laws were not applicable under the provisions of the Taft-Hartley Law.

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Do you recall your testifying to that? A. To that effect, yes.

Q. Therefore, I take it that the I. T. U. has never made any attempt to specify to any particular local, or to the

members of the local, which of the general laws should not be utilized by that local in the conduct of its operations? A. We have specified some of the provisions, such as non-discrimination, and such as that they are not privileged to strike to get a union foreman, although they can contract for one.

Q. That was as a result of the Board's decision, and the enforcement of that decision by the Court, that you couldn't strike to get a union foreman? A. That's right.

Q. My question was: Has the I. T. U. spelled out to particular locals which of the general laws the local should not enforce or utilize?

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A. It has made no attempt to take the whole book and tell them which law they may not adopt or use in any given place.

Trial Examiner: Let me make that question more specific by adding this to it: Because such laws are in conflict with the Taft-Hartley Act.

The Witness: I assumed that in my answer.

Trial Examiner: All right.

Q. (By Mr. Richman) To your knowledge, has any individual local made known to its membership, or the employers with which it had contracts, that specific provisions of the general laws were not being applied because they were in conflict

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with the Taft-Hartley Act?

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A. There have been one or two instances where I heard about a local officer telling a publisher that he couldn't have

a continuation of a 1947 contract because it was written for the employment of union people only.

Q. (By Mr. Richman) That was with respect to a particular contract? A. Yes.

Q. But with respect to the particular provisions of the general laws, is your answer no? A. They wouldn't know.

Q. You mean the local— A. The local unions wouldn't know all the different things about the Taft-Hartley Law that were contrary to the I. T. U.

Q. Therefore, I take it—and correct me if I am wrong—that you have had no inquiries from specific unions, specifically Mailers' Union No. 6, to your office as to which of the general laws they should or should not follow? A. I may have had, in the course of these eight or nine years—

Q. Do you recall any as you sit there now? A. I don't recall any for any union, although there were hundreds of them.

Q. I take it also that when General Law Article 14 was promulgated, as you testified, I think, in the 1953 convention,

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there was no enumeration of any of the general laws which would be suspended so long as the Taft-Hartley Act remained in effect? A. No.

Q. Is your answer the same with respect to the report of the committee on collective bargaining policy of the 90th session of the union, which appears in Intervenor's Exhibit 4 on the bottom of page 13? A. I don't understand the question as applying to that section.

Q. Let me refer you to the exhibit, Exhibit 4 of the Intervenor, and to the language at the bottom of page thirteen in the right-hand column.

(Witness examines document.)

A. There was no enumeration of the laws.

Q. There was no enumeration there, either? A. No.

Q. You were asked about the I. T. U. facilities for teaching journeymen other branches of the trade, other than those for which they are considered competent or qualified.

Does the I. T. U. maintain such facilities for mailers? A. At the present time, no. We have been trying to get some of the new mailing machinery, but we haven't been able to get it installed for that purpose.

Q. Mr. Randolph, a man, in your opinion, or, rather, is

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it the union's position that a man on a priority list is *per se* a competent person? A. A man on a priority list?

Q. Yes; who holds, let's say, a regular situation, or a regular substitute position on that priority list, he is *per se* competent? A. As far as we know.

May I say that there are such sharp divisions in the kind of product, that a man may be competent in one particular field of endeavor, and might move over to another shop that specializes in a much higher grade product and he won't be tolerated, he would be fired the first day.

Those divisions are pretty sharp, and men find their particular level based on the kind of a shop in which they made journeyman.

Q. Does what you say necessarily apply to the mailers? A. I don't think so.

Q. You are thinking in terms of a composing room? A. That's right, yes.

Q. If a member of your union is on a priority list, and is suspended by your local union, he loses his position on the priority list; isn't that correct? A. A member of the union who is suspended by the union, you say—

Q. By the local union.

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A. Does he lose his position on the priority list?

Q. Yes. A. No. A man cannot be suspended by a local union until he has had an opportunity to appeal to the executive council, and perhaps to a convention, before any penalty of suspension can be made to stick.

Q. Has the local union the right to debar a man from work? A. Has the union a right to bar a man from going to work?

Q. Yes. A. They bar him from going to a non-union office.

Q. Couldn't they bar him from working at the office where he held his priority? A. No. There is no provision for that.

Q. I refer you to Article 4, Section 19, of your by-laws. A. You mean for non-payment of dues?

Q. For any reason. A. If a man doesn't keep his dues paid up, he can be barred from the office until he pays his dues. That is a fraction of a penalty on a member. If he wants to get out of the union rather than pay his dues, he will stay there.

Q. But he can be kept from his work as long as he is a member and in default of his dues? A. Yes.

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Q. So it is not a question of his competency as allowing him to work? A. As a member. As a member, he has to comply with these internal laws.

Q. As a member, he must remain in good standing in order to work? A. Right. If he doesn't want to accept that, he can get out of the union and still work there. We have some people like that, and I don't like to say what we regard them as being

Q. I think your by-laws uses the term "rats"? A. That is bad enough, and I can think of worse.

Trial Examiner: Is this an appropriate place to stop for the night?

Mr. Richman: Yes, sir.

Trial Examiner: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at six o'clock p. m., an adjournment was taken to Friday, November 15, 1957, at 9:30 o'clock a. m., at the same place.)

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Stenographic Transcript of Testimony at Hearing of November 15, 1957.

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PROCEEDINGS

Trial Examiner Libbin: The hearing will come to order.

* * *

WOODRUFF RANDOLPH resumed as a witness by and on behalf of the Intervenor, and having been previously sworn, was examined and testified further as follows:

Cross Examination (Continued):

Q. (By Mr. Richman) Mr. Randolph, is there anywhere in your book of laws a definition of what "good standing" constitutes for a member, or as far as a member is concerned? A. There is, with relation to candidates for office.

Q. Only as far as candidates for office goes? A. That is a little more technical, and besides the ordinary simple definition is that he has to have his dues obligations paid up. There is a more technical description of good standing as regards candidates for office.

Q. Would you say that a member, to be in good standing, should adhere to the duties of membership as set forth in Article 12 of your constitution? A. Yes.

Q. With reference again, Mr. Randolph, to the opening address you made to your assembled members on August 17th,

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1957, at their convention, do you recall telling them that: "There are employers in smaller cities who are resisting and refusing the kind of negotiations and contracts we insist upon for our very life"?

Do you recall telling them that? A. Something to that effect.

Q. Do you recall telling them something to this effect: "There are many unfair employers who are trying to tear down those fundamental principles upon which the I. T. U. has lived for 105 years"? A. If you are quoting from it, I will accept it.

Q. The quote actually begins with the words "who are trying" and ends with "years," but the other words are to that effect in the speech? A. I am frequently saying those things. I assume you are quoting from that speech.

Q. Yes.

Isn't it a fact that you consider this priority system as one of the fundamental principles to which you referred in this speech? A. Yes.

Q. The official journal of the I. T. U. is the Typographical Journal; is that correct, sir? A. That's right.

Q. That comes out monthly?

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A. Right.

Q. I believe in each month's edition you have a page in which you comment or discuss various problems? A. I have, yes.

Q. Your signature, I believe, and your picture, usually appear at the top of that page? A. They did until lately when they cut out the picture.

Q. You are correct, they did. A. The editor is the secretary-treasurer.

Q. Do you recall writing, in the July 1957 edition of your Typographical Journal, words to this effect: The provisions of our general laws are the basis of union shop operations and have been so throughout the history of the I. T. U. These laws outline the minimum conditions which will suffice in a union contract? A. If you are quoting, I will accept it.

Q. These are words to that effect? A. Yes.

Q. Further, that the I. T. U. president cannot approve a contract unless it complies with the current general laws? A. That's right.

Q. Then, in that same edition, I believe, was printed your annual report? A. In the July issue, yes.

Q. Do you recall writing in your annual report words to

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this effect: Our stubborn refusal to capitulate to the Taft-Hartley and other restrictive laws has kept our union alive?

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A. If you are quoting from it, I will accept it, but the statement requires some explanation.

Q. (By Mr. Richman) What is your explanation, sir? A. In the beginning of the Taft-Hartley Law, the then General Counsel, Mr. Dennom, attacked about everything that we were doing as being illegal, and we refused to accept his attacks and his interpretation of the law, and over some seven years of litigation we proved we knew more about it than he did. His attacks were ruled not legal.

Q. One further excerpt from your report, Mr. Randolph:

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Do you recall a reference to so-called labor experts which you made in your report, and your writing that "Their influence has been overcome by insisting on contracts with unquestioned acceptance of I.T.U. standards provided for in the general laws? A. If you are quoting, I will accept it.

Q. Mr. Randolph, the contracts we have in evidence here, General Counsel's Exhibits 2 and 3, require that foremen must be members of the union.

Is it not true that they are expected to be members in good standing of their particular local? A. Yes.

Q. Therefore, they are not—am I correct—relieved of the duty to abide by the duties of membership as set forth in your constitution in Article 12? A. With the exception of any obligation that would be contrary to their duties as foreman and restrictions of the Taft-Hartley Law.

Q. Has any specific advice been given to foremen in general as to which of their obligations or duties, or as to which provisions of the general laws, are in conflict with the Taft-Hartley Law, and are not to be followed? A. We haven't issued any official statement. Any inquiries would be answered; but in the main, the employer takes care of

the foreman and tells him what to do. He is

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the employer's agent.

Q. Would it be correct to say that on your part you have really done nothing to specifically delineate what the foreman is not to follow? A. Well, the general instructions that we have sent out to chapels undoubtedly reach the foreman, and he undoubtedly reads them.

Q. But those are phrased in general terms, that you are not to do anything contrary to law? A. Right.

Q. I think you said yesterday that there is no provision for training mailer apprentices in your International set-up? A. At the present time.

Trial Examiner: When you say "at the present time," does that mean that there was at some time prior to the present time, or that there hasn't been any up to the present time?

The Witness: We are speaking now of the Bureau of Education and the technical school that we operate. Up until now, there has been no specific training for mailers, but we are endeavoring to get new mailing machinery installed in our technical training center to help train them.

Mr. Van Arkel: Mr. Randolph, I think the question related to apprentices.

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The Witness: Well, either journeymen or apprentices may be able to attend if we get it established, or when we get it established.

Q. (By Mr. Richman) Mr. Randolph, isn't it a fact that all apprentices, upon their application, must subscribe for and complete a course of lessons in unionism within ninety days from the date of registration? A. Yes.

Q. What do those courses in unionism consist of, briefly? A. Well, they consist of a brief history of the International Typographical Union, and its policies and its principles.

Q. Isn't it a fact also that all persons, before entering the trade as apprentices, shall first be approved by the local union? A. If you are reading from a section of the law—

Q. That's right, sir. A. —that is true. In general, we have joint apprentice committees where the employer and the union pass on the adaptability and the health of applicants for apprenticeship. It is a joint effort, in the main.

Q. Are there places where this is not a joint effort? A. In the main, the foreman will put on an apprentice when they are entitled to one under the contract. But in order that he be of a proper education, health and character,

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we insist that we have an opportunity to see to those factors. That is the reason for that law.

Q. Going again to Article 3 of Section 1 of your general laws, you have a discussion there of your policy with respect to qualifying local unions under the Labor-Management Relations Act.

I have the 1956 general laws. Is that what you have, sir? A. Yes.

Q. That is the same in the 1955 general laws? A. I think so.

Q. I am referring to page 111, the center of the page. A. Yes.

Q. You say there, or rather the general laws say that:

"There are features of such a union shop that are unacceptable to our members."

Sir, could you tell me what features of this "union shop" are unacceptable to your members? A. The union shop described in the Taft-Hartley Law is one that the employer may grant, and it provides that any employee must join the union after a period of thirty days' employment.

That would permit the employer to determine not only the character, health, competency and so on of such an employee, but he would have the method of determining who

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members of the union were to be. That is entirely repugnant to the history of the traditions of the International Typographical Union.

Q. The I.T.U. desires to have strict control over the admission of members; is that correct, sir? A. We insist on complete control as to who may become a member of our organization.

Q. Does it also insist upon complete control as to who may be classified as a competent journeyman? A. No; that is not so.

Q. I believe yesterday—and correct me if I am wrong—you mentioned that the word "jurisdiction," or the exercise of I.T.U. jurisdiction, means that the particular work under the jurisdiction is to be done only by members of the I.T.U.? A. No, I didn't say that.

Q. Could you tell me what your definition of jurisdiction over work would be? A. Jurisdiction over work is specified in the book of laws, and is general in terms. It is probably found in more than one place.

Q. I refer you to Article 3, Section 12, on page 114.

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The Witness: What section are you referring to?

Mr. Richman: Article 3, Section 12, of the general laws.

A. Yes.

Q. What is your definition of jurisdiction there, Mr. Randolph? A. That is not the section that defines jurisdiction, but it is a general statement as to policy and the work and machinery that we try to cover.

Q. What do you mean by "try to cover"? A. You will notice the last part of it is a direction to local unions to reclaim jurisdiction over and control all composing and mailing room work, or any machinery processes appertaining to machinery and preparations therefor now being performed by non-members.

Q. In other words, the work that is done by non-members, you endeavor to have done by members insofar as you can? A. That particular section was adopted for the purpose of getting the work which journeymen had allowed to slip away, back into the craft under journeymen. The worst situation in the country is right here in New York in the composing

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rooms where they carelessly allow them to work processes to be done by other than journeymen, and while they were sleeping and smug in their satisfaction, the Guild organized some of those people.

Q. However, the words you use in this section, or the words that are used in this section, don't refer to journeymen; am I correct? A. It refers to work that got away from journeymen.

Q. You say now the work being performed by non-

members should be reclaimed? A. This was adopted before Taft-Hartley.

Q. It hasn't been changed since? A. No. It is referring to that slippage that was allowed in some composing rooms whereby semi-skilled people were allowed to do some work.

Q. You told us yesterday, I believe, that to your knowledge there are people classed as journeymen who are not members of the union; is that right, sir? A. State that again, please.

Q. I believe you told us yesterday that to your knowledge there are some people classed as journeymen who are not members of your union? A. Yes.

Q. Would this have any application to them? A. No.

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Q. Would they be permitted to do the work that they have been doing, even though they are not members? A. Any journeyman who is not a member, and is working in a shop, does journeyman work the same as the journeymen do.

Q. You wouldn't make any attempts to reclaim the work that he is doing and give it to a union member? A. That is not what this means.

Q. Isn't it a fact, Mr. Randolph, that the local union contracts are designed to cover the working conditions of members? A. Local union contracts are for the purpose of establishing wages, hours and working conditions under which our members will work.

Trial Examiner: Mr. Randolph, let me ask you at this point, how do you reconcile your statement with respect to journeymen which you just made with the provision in the general laws stating that all journeymen must be members?

The Witness: That is what I referred to when I said that there are many times where it appears in this book that members are mentioned and the instructions to our people concerning contracts means that wherever the word "members" is used in this book, it means journeymen as regards the work opportunities of non-union journeymen.

Q. (By Mr. Richman) Do you have anywhere in your general

laws a statement to that effect, that where the word "members" is used, it refers to journeymen generally? A. The last article of the general laws does that.

Q. You mean Article 14? A. Yes.

Q. Article 14 to which we have referred on a few occasions? A. Yes.

Trial Examiner: What does that say?

Mr. Richman: "In circumstances in which the enforcement or observance of provisions of the general laws would be contrary to public policy, they are suspended so long as such public law remains in effect."

Mr. Sugarman: "Public law," I think, is used in both places. I don't think it is "public policy."

Mr. Van Arkel: Public law.

Mr. Richman: You are right; I am very sorry. It is "public law" in both places.

Q. (By Mr. Richman) Mr. Randolph, I refer you to Article 7 of the general laws, which I believe is the same in the 1955 edition as it is in the 1956 edition, or substantially the same.

Has that article any impact upon mailers? A. Mailing is specifically mentioned in the first section.

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Q. You are correct, sir.

In Section 2, there is a reference to a machine office. Does that have any meaning with respect to the mailing trade, or is that restricted to typographical work? A. It doesn't restrict it. Actually, the section has been in the books so long that it may even antedate the mailing machinery that is in mailing rooms now. We do have our people trained in mailing rooms on the machinery that is available in those rooms.

Q. Therefore, Section 2 of Article 7 would have an impact upon the mailing craft? A. Yes; but again let me point out that when we make contracts, I have to approve them as being in accord with this book. When I approve those contracts, nowhere does the word "members" appear; it is journeymen.

In other words, we recognize only journeymen and apprentices, and the sections of this book that are required to be put into contracts are put in there with the word "journeymen" substituted for the word "members."

Q. Do you know, sir, whether the word "members" appears in the contracts we have in evidence? A. I don't think they do.

Q. You don't think so? A. I don't think so.

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Q. In Section 23 of General Counsel's Exhibit 3, the provision reads: "That the union"—meaning Mailers' 6—"agrees that it will not contract for its members, nor permit its members to contract with any publisher for work specified in this agreement at wages and hours more favorable than herein provided without permitting any publisher signatory to this agreement at any time there-

after to put into effect the more favorable wages and hours that have been granted elsewhere."

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Q. (By Mr. Richman) Mr. Randolph, are you familiar with this provision that I have read? A. Since you have read it, yes. It appears in a few contracts, and we refer to it as a "favored nations" clause. You couldn't use other than the word "members" in that respect.

I made the statement—and I stand by it—that wherever a contract comes in, or a proposed contract comes in, using the word "members" with relation to job opportunities, it is changed to "journeymen," or any other factor of contract relationship.

Q. Could you turn again, please, to Article 7 of the general laws, Section 5?

Would that provision have any impact upon mailers? By "impact," I mean involve any work done by mailers. A. Mailing isn't mentioned there, no.

Q. None of the duties set out involve the work done by the mailing craft? A. I don't see it mentioned there, no.

Q. Going to Article 8 of the general laws, under the heading of "Machine Tenders and Machinists," would that Section 1—which is the only section under Article 8—

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affect the work done by mailers? A. Yes. It is specifically mentioned there.

Q. Under Article 10, Priority, Section 2, where subordinate unions are directed to establish a system for registering and recording priority standing of members in all chapels, is it your contention, Mr. Randolph, that the word "members" there also means journeymen? A. Yes. That is the way it operates.

Trial Examiner: Just for the education of the Trial Examiner, Mr. Randolph, reference to the phrase "chapel"—is that sort of synonymous with the shop that the local union happens to be the bargaining representative for?

The Witness: Yes. "Chapel" means the composing room portion of the plant, or it may mean the mailing room portion.

For your education, I will say that the word originated in England, and the reason the word "chapel" was used is because the first printing office in England was operated by a Mr. Caxton, who had it located under the King's Wing in Westminister Abbey.

In my office, I have an old-time woodcut engraving of considerable size that shows Caxton and his crew at work producing proofs for the King and Queen, or someone in royal robe. You can see the arched ceilings of Westminister Abbey in that drawing.

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We acquired the word from the English print shops.

Trial Examiner: There is only one chapel in an employer's establishment?

Take the News Company. You would say that there is only one chapel established at the News Company?

The Witness: One in the composing room, and one in the mail room.

Trial Examiner: There would be one in each room?

The Witness: Yes.

Q. (By Mr. Richman) With separate chapel chairmen?

A. Yes.

Q. Isn't it a fact that one of the duties of the chapel chairman is to see that the general laws are respected and followed insofar as they pertain to the particular operation? A. His duties are set forth in Article 3 of the by-laws, and they are quite specific.

Q. You are referring to Article 3, Section 2, and Article 3, Section 3? A. All of the sections of that article.

Q. All of the sections of that article? A. That's right.

Q. I see that in Article 3, Section 2, it is stated that: "It shall be the duty of the chapel chairman to report to the president of the local union any violation of union law or provision of the contract."

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The term "union law" applies—and correct me if I am wrong—to any applicable provision of general laws or the union constitution? A. General laws only.

Q. Would it include the constitution and by-laws of the I. T. U. also? A. No.

Q. Is the chapel chairman charged with the responsibility of reporting to his local president violations of law other than affecting working conditions by members? A. We have a system of elections whereby the elections are held in the chapels, and he might report something about a violation of our election laws.

Q. What about cases of conduct unbecoming a member? A. That, of course, might be taken up as an internal matter in the union.

Q. So, therefore, wouldn't these other things be included in the term "union law" as used here? A. No. That is not the meaning of it. Our members are generally law-abiding. If somebody in the chapel violates any of our internal laws as a union man, obviously having no relation to the employer, it would be reported.

Q. Wouldn't you say that one of the duties of the chapel chairman is to see that the internal laws of the union are respected and followed?

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A. No; that is not his business.

Q. Is he supposed to turn his back when he sees any of these laws violated? A. No; that would be silly.

Q. What is he supposed to do? A. He is there in his capacity as stated in Section 1 of Article 3: "All offices in which three or more members are employed, a chapel shall be formed and a chairman elected. In case of failure or refusal of a chapel to elect a chairman, it shall be the duty of the local president to appoint a member to act as chairman."

The first line of Section 2 says: "The chapel chairman shall be recognized as the representative of the local union for such purposes as are specified in the laws of the International Typographical Union," and so forth.

Q. Where you just read, "the laws of the International Typographical Union," that word is in lower case letters and apparently doesn't refer to the general laws? Am I correct, sir? A. No; it refers to the general laws.

Q. Also the general laws? A. It says: "He shall be the representative of the local union for such purposes as are specified in the laws of the International Typographical Union," and then it goes on to say what his duties are.

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Q. I notice that the cover of this particular document, and of all your annual documents of this sort, is headed: "Book of Laws of the I. T. U."

Is it your testimony that the word "laws", as used in Article 3, Section 2, in lower case letters, does not refer to this book of laws as such, and *in toto*? A. It refers to

the purposes as they are specified in the laws of the I. T. U., and Section 3 goes on to provide: "In performing the duties prescribed for him in the general laws pertaining to violations of the contract or scales of prices, and the enforcement of the five-day week, and overtime laws, the chapel chairman shall not be subject to any intervening action by the chapel. As a representative of the local union in such matters he is directly responsible to the local union."

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Q. (By Mr. Richman) Mr. Randolph, in Article 3, Section 3, in the first sentence, you have a specific reference to the words "general laws"? A. Yes.

Q. Is there any reason why there is no specific reference to the words "general laws" in Section 2, in the place where you say this term "union law" refers to general law? A. I explained before in my testimony that in the general laws we have segregated all of those laws in which the employer has an interest in wages, hours, and working conditions.

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It is for the chapel chairman to report to the president anything he thinks is a violation of either the contract or any union law that is accepted and enforceable because of the terms of the contract.

Q. Therefore, you still adhere to your previous testimony that in Section 2 the term "union law" refers to general law? A. Yes.

Q. Am I correct in stating, Mr. Randolph, that the local union contracts with employers don't specifically provide for the creation or the maintenance of a priority system? A. I doubt that any contract has a provision for the estab-

lishment of the priority system by a specific section, although the use of the word "priority," and the way it works, refers to the priority system established by the union and maintained historically in the composing and mailing rooms.

* * *

Q. (By Mr. Sugarman) Dealing for a moment with Section 23 of the Mailers' Union No. 6 collective bargaining agreement in evidence, that most favored nation clause, as I think you referred to it, is it not a fact that the word "members" is put in and significantly used in that section rather than

"journeymen" only because it is members exclusively over whom the union assumes to exercise discipline? A. That's right.

I may say that the local union might make a contract using the word "journeyman," and we would accept it at headquarters. Actually, the clause is one of the very older clauses, and has been gradually discarded because of the lack of equity in the arrangement.

Where there has been sharp competition and employers felt that the union might allow their members to work in other offices, they are the ones who brought that out. They brought out the desire to have none of our skilled people working in shops that had cheaper production arrangements with the union.

The real thing there is that in most every town there are shops that are operating either non-union, or a larger group of shops that will say, "We will go along with the contract that is in effect, but we don't want to sign it."

It is one of those picayune things that comes up and employers ask for it and they can have it.

Q. May I ask you, in a general way, Mr. Randolph, whether the union holds out its members as at least presumptively competent journeymen subject to any determination otherwise by the foreman in a mail room or in a composing room?

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A. All members of the union, by virtue of having been examined and passed upon by local unions as competent, are presumed to be competent. I should say an examination by the local union and the employers.

Q. Have you some familiarity of your own, from personal observation and visits to the mail room, and perhaps from personal experience, with the work of the mailers in general in the mail room?

Mr. Richman: Objection.

Trial Examiner: The question is whether he has. Can you answer that yes or no, please?

The Witness: Not too much.

Q. (By Mr. Sugarman) You are familiar, are you not, with the requirements, nevertheless, for the provision of an apprentice training program for mailers? A. Right.

Q. If I were to show you an apprentice program setting forth in detail the various activities of the mailers, you wouldn't be able to verify, I take it, from your experience, that these were the qualifications required of the journeymen mailer; is that right? A. I do have under my direction a contract department, and I have a man there who screens the contracts and sees to it that they do provide for apprentice training in each contract.

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Q. I will pass the question with you and get to it through another source. A. May I, by way of explanation, say also

that our third vice president is a mailer, and our constitution requires that he be a mailer in order to be third vice president. Any matters referring to the technicalities in the mailing trade are referred to him. That is the reason why I am not too familiar with the processes in the mail room.

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Q. (By Mr. Sugarman) Have the publishers, to your knowledge, in contract negotiations or otherwise since 1948, ever asked the I. T. U. or its subordinates for a bill of particulars as to what specific provisions of the Taft-Hartley Law the parties were to regard as in conflict with otherwise applicable I. T. U. or local laws? A. Has who asked for it?

Q. Have the publishers asked us for a bill of particulars? A. No.

Q. So that the general language as to provisions of the public law in conflict with I. T. U. general laws is all that was required, and was found satisfactory to the publishers in negotiations? A. They didn't even ask for that. We put that in on our own. The publishers and the employers generally will have their own lawyers to keep them in shape.

Q. Is an extra as such compensated for his work at the same rate of pay as a regular situation holder, or a substitute covering for an absent regular situation holder? A. You are into that local confusion over the terms of

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situation holders and substituting extra. We only use the term "extra" when a journeyman is hired by the office for a night's work. The same man the next night might be hired by a regular to sub for him, and he would be a substitute. The term for all of them generally is subs.

The use here of the word "extra" for a group of people hired on Friday and Saturday nights to help get out the paper causes confusion in the terminology we use. Therefore, your question would have to be answered this way, Mr. Sugarman:

That a journeyman showing up for either substitute work or extra work, is hired in those capacities as needed.

* * *

Q. (By Mr. Sugarman) Is it clear to you, Mr. Randolph,

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that provision is made, at least in the Mailers' Union contract here in evidence, for the payment of fifty cents more than the scale for the shift provided for the journeymen, when an extra as referred to in the contract works a shift other than as a substitute for an absent regular?

Are you aware of that fact? A. Yes. That is generally so where there is any welfare provisions throughout the country. "Around the country" doesn't mean this nondescript group of people who might come in on Friday or Saturday. If they had those provisions here, it is beyond the terms of the contract.

Q. Do you know whether there is any historic reason for the publishers paying such a premium to the casual workers or the extras? A. The reason for it is that they agreed with the union to do it, and the reason the union wants it done, so as not to undercut their scale by having people do part of their work in an emergency at a lesser rate; even those people might not be able to deliver.

Q. Has it also been the part of the willingness of the publisher to pay a premium for that reserve labor pool to the men who show up and who risk walking, or a late start?

A. Yes. The payment of an extra amount of money for those not regularly employed is widespread.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Van Arkel) Mr. Randolph, in establishments where a slip board is not used, is it the general practice that the foreman maintains a list of journeymen and substitutes in priority order? A. I wouldn't know what the foremen do.

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Q. (By Mr. Van Arkel) When a person goes to work in a composing room or a mailing room, do contracts generally provide that the foreman may have an opportunity to determine whether they are competent? A. When a foreman hires anybody, whether he is union or non-union, he is the one who determines whether they are competent or not right off. Men have been discharged within one shift as not competent. He is the one who hires them; he is the one who judges their competency, and he does that right off.

Q. Would that apply as well to members of the I. T. U.? A. Yes.

Q. That is to say, under the applicable contracts, if a foreman feels that a man isn't competent, he has the right to

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either not hire him or to discharge him immediately? A. it is historic with us that a member of the union is presumed to be competent, and if he goes into a shop where the work is over his head, and he doesn't perform, why, the foreman discharges him.

Q. Would you say that in general all of the subordinate

unions of the International Typographical Union have members who are employed in shops which don't affect interstate commerce? A. There are some, yes.

Q. I take it the country has a good many small print shops in it where members of the I. T. U. are involved? A. Yes. That is reflected in the fact that there are over four hundred of our eight hundred unions where we have twenty-five or less members.

Q. There has been a question raised here about the applicability of the constitution and by-laws of New York Mailers' Union No. 6.

What has been the general practice with respect to the applicability of the constitution and by-laws of local unions? A. It has been a historic principle that the employer is not to be concerned with the internal affairs of the unions, either typographical or mailer. Since 1901, the phraseology has been standard in contracts that the local union laws not

affecting wages, hours and working conditions, and generally laws of the International Typographical Union shall not be submitted to arbitration.

Local union laws of any kind are not binding on an employer unless specifically stated in the contract. I know of none having that provision in them.

Q. We have discussed here before this clause which makes reference to the general laws of the International Typographical Union.

Do I understand your testimony to be that similar provisions are not made with respect to any rules adopted by local unions? A. They are not made, that's right.

Q. So that the practice in the industry has been that

general laws of the I. T. U. may govern conditions not specifically covered by the contract, but not any local laws which may be adopted by subordinate unions? A. That's right.

Q. Mr. Richman read to you certain articles in which you made reference to the general laws of the International Typographical Union throughout the course of the year 1957.

Were those remarks made after the adoption of Article 14 of the general laws?

Mr. Richman: Could I have that question again, please?

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Trial Examiner: Read the question.

(Question read.)

A. I think he read from the 1957 convention proceedings, so the answer, then, is yes, because the amendment of Article 14 to the general laws was made, I think, in 1953.

Q. Were your references to the general laws made with Article 14 in mind? A. Article 14 in the Taft-Hartley Law has been in my mind since adopted in 1947.

Q. What has been the tradition of the International Typographical Union with respect to the union membership of apprentices? A. Apprentices for the first year are on probation in a shop to see whether they have the aptitude and are likely to become good craftsmen. During that probationary period, they may be eliminated without much training.

Beginning in the second year, they begin the technical training through out Bureau of Education. They are given an apprentice membership application to the union, and invariably they fill them out and become apprentice members.

As such, they share in the benefits of the union printer's home. The per capita tax of the union is divided as between upkeep of the general fund and upkeep of the union printer's home. If they come down with T. B., or anything else in their apprenticeship, we take them to the home

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and keep them there until we get them in shape to go back to the trade.

There is one theme through all these seven years that seems to be that we are wrong *per se*, and I take the position, and have taken it, that we are right *per se*, in everything we do, and we are fortunate in having the respect and admiration of good thinking people throughout the country because we do those things.

Now, the thought that we pressure an apprentice to become a member of the union is rather ridiculous. They are all very happy to do so as soon as they can.

Q. As I understand your testimony, at a time that a person is selected to become an apprentice he cannot at that time be a union member, can he? A. No.

Q. Throughout the first year of his apprenticeship, he is not eligible for union membership? A. No.

Q. So that any element of potential discrimination because of union membership or non-membership in the selection of apprentices is quite out of the question, is it not?

* * *

Q. (By Mr. Van Arkel) Since the passage of the Taft-

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Hartley Act, Mr. Randolph, have you, to your knowledge, approved for submission, or as a final agreement, any contract which did not spell out the meaning of the word "journeyman"? A. May I have that question again, please?

Trial Examiner: Read the question.

(Question read.)

A. Not to my knowledge.

Q. I take it, then, that the provisions similar to Section 20(b) of the agreement with the New York Mailers' Union No. 6 have been standard throughout the industry since 1947? A. I would say so, yes.

Q. Calling your attention to the clause which refers to the general laws, I believe you have already testified that that clause contains language not in conflict with this contract? A. Right.

Q. So that if any general law of the International Typographical Union purported to impose different conditions than those provided by the contract, the contract would govern, would it not? A. It would, yes.

Q. Quite apart from any question of their legal validity? A. Right.

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Q Do the laws of the International Typographical Union permit subordinate local unions to upgrade mailer apprentices in an emergency? A. Yes.

Q. For how long has that provision been in the laws, do you know? A. I think that was adopted about 1953 or 1954.

Q. If you know, would you state what the reason for the adoption of that rule was? A. The reason was the shortage of help and the fact that so many mailer unions had been subjected to the employment of what are here called extras in a group not apprentices and not journeymen, but employment of people to get the paper out.

It was tied in also with a provision that the president of the International Union might authorize admission of any

member, printer, or otherwise, with less than six years, under certain circumstances of having been trained and upgraded.

The section referring to that in our by-laws was clarified and amended to read: "Mailer applicants who have not served a regular apprenticeship may be admitted with less than six years of training upon approval by the local union when the applicant is to be employed on journeyman work at the journeyman scale under circumstances deemed an emergency

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by the local union."

Under that provision, the local unions have admitted to membership those they deemed competent and the employer deemed competent and willing to pay the journeyman scale.

Mr. Richman: Excuse me, but can we have a specific reference to that section you just read?

The Witness: It is subsection (g) of Section 3, Article 16, I. T. U. by-laws.

Mr. Richman: Thank you.

Q. (By Mr. Van Arkel) We have had some previous testimony, Mr. Randolph, about the litigation involving the I. T. U. which began in late 1947.

In the course of that litigation, did representatives of the General Counsel undertake specifically to challenge the legality of certain laws of the International Typographical Union?

A. Many of our laws were so challenged.

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Mr. Van Arkel: I would like to make an offer of proof.

Trial Examiner: Let me suggest that you make it in question and answer form.

Mr. Van Arkel: Yes, sir.

Q. (By Mr. Van Arkel) Mr. Randolph, will you state some of the provisions of the general laws which were attacked by the office of the General Counsel in the course of that

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litigation? A. They attacked the requirement that apprentices take the oath to the I. T. U.; that they study the course of lessons in printing.

They attacked the law requiring that a joint apprentice committee be set up for the training and education of apprentices.

They attacked the law that provides that I. T. U. laws are not to be subjected to arbitration, and that vacations are not to be eliminated through arbitration.

They stated that those provisions of the law were illegal which provided that contracts when entered into must be in accord with I. T. U. law, and must be approved as such by the I. T. U. president.

They attacked as unlawful the law which reserves to members the right to refuse to work on unfair or struck goods.

They claim that the law requiring that composing room work be done by journeymen and apprentices was illegal.

They objected to the law which defines the jurisdiction of the International Typographical Union, and which provides that the foreman is the only recognized authority in the composing room.

They claim that the law dealing with appeals and discharge cases was illegal.

They claim that all priority laws of any nature were

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unlawful.

They attacked those provisions of the law which give members of the I. T. U. the right to employ substitutes.

They claim that the law that foremen and journeymen must be I. T. U. members in good standing was unlawful.

They attacked as unlawful the law dealing with the reproduction of advertising matter.

In addition to those major ones, they attacked a host of minor laws.

Trial Examiner: Does that conclude the offer of proof?

Mr. Van Arkel: No, sir.

Q. (By Mr. Van Arkel) Subsequently, when those matters came to the Board or to the Courts, Mr. Randolph, did the Board or any Court enter any finding that any specific law of the International Typographical Union was contrary to the Taft-Hartley Act?

Trial Examiner: Aren't you asking this witness to testify—

Mr. Richman: That is part of the offer of proof.

Trial Examiner: That is what I understand.

A. I don't recall any specific law was held to be illegal.

Q. (By Mr. Van Arkel) As a matter of fact, at least one of the laws you mentioned, namely, that relating to the

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reproduction of advertising matter, was specifically found to be lawful, was it not? A. Yes.

Q. In light of that experience, I will again put the question to you:

State whether or not it would be possible for the I. T. U. or its officers, to specify exactly which laws and under what circumstances, might not be validly applied. A. We couldn't do that.

Mr. Richman: Mr. Van Arkel, could you tell me when you have completed your offer of proof?

Mr. Van Arkel: Yes, I will.

Q. (By Mr. Van Arkel) These laws, Mr. Randolph, you have already testified, were adopted by delegates to the convention of the International Typographical Union? A. Or by referendum vote.

Q. As such, are they internal laws of the union, affecting the relationship between the members of the union and their relationship to the International Typographical Union, as well as affecting working conditions? A. Yes.

Q. In any of this earlier litigation, was any limitation placed by any order of the Labor Board or the Courts on the right of the delegates to conventions, or members by referendum vote, to decide which laws they would adopt for their own

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governments? A. No.

Mr. Van Arkel: That ends the offer of proof.

Mr. Richman: I move that it be rejected.

Trial Examiner: I will reject the offer of proof.

Q. (By Mr. Van Arkel) Mr. Randolph, at the conclusion of the agreement between the Publishers' Association of New York City and New York Mailers' Union No. 6, there appears in typewritten form a statement signed by you, which reads:

"In order to comply with International Typographical Union laws and procedure only, and without affecting the rights of the Publishers, this agreement is approved as

being in compliance with the laws of the International Typographical Union as limited by the Taft-Hartley Law, and the undersigned, on behalf of the Executive Council of the International Typographical Union, hereby pledges as a matter of union policy only its full authority under its laws to the fulfillment thereof without becoming a party thereto and without assuming any contractual liability as a party."

Now, specifically was this language, "the laws of the International Typographical Union as limited by the Taft-Hartley Law" designed to carry out the provisions of Article 14 of the general laws? A. Yes.

Q. For how long a period of time has this form of

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clause been in use? A. That form has been in use since the Taft-Hartley Law was adopted.

Mr. Van Arkel: That is all I have.

Trial Examiner: You read from what exhibit?

Mr. Van Arkel: It is in Exhibits 2 and 3 of General Counsel.

Mr. Richman: I have two or three questions.

RE-CROSS EXAMINATION:

Q. (By Mr. Richman) Mr. Randolph, I believe you said that the union considers that its members are presumptively competent? A. No. I said we presume they are competent.

Q. I am sorry; you are correct.

Therefore, you expect the foreman to hire them, at least to put them on in the first instance, isn't that correct, when they appear for work? A. Well, I don't know what you mean by "in the first instance."

Q. If a man shows— A. If he needs help, he hires him.

Q. The foreman is expected to hire a member when he shows? A. Obviously, he is expected to hire a member if a member shows. If there are other people showing who have priority

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over them, he would hire the other people with the priority over them.

Q. Will you look at this Section 18 of the New York Mailers' contract, which is General Counsel's Exhibit 3? Am I not correct in saying that this section refers to people who you would consider substitutes, or who you would term substitutes? A. Do you mind if I read it aloud?

Trial Examiner: It is already in the record.

Mr. Richman: It would burden the record if you did that.

Trial Examiner: Just read it to yourself. It is already in as evidence.

(Witness examines document.)

The Witness: That refers to—while it says "extras," it refers to what I would consider journeymen.

Q. (By Mr. Richman) Am I correct in saying also that nothing in this contract is specifically designed to cover these extras that we have heard about at the Daily News, these so-called casual men? A. There is nothing in here that I know of about those casual people.

Q. If this Section 18 had an impact on these casual people, it is not through the specific intent of this contract to so cover them?

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A. Right.

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Q. (By Mr. Sugarman) Mr. Randolph, do you have any knowledge as to whether or not the so-called casual extras are paid the fifty cents as the substitutes are, or the journeymen are? A. No, I have no knowledge of it.

Q. You have no knowledge of their not being so paid? A. That's right.

Q. Does the union alone have control over the quick upgrading of apprentices to journeymen status in the two-year period instead of the six years? A. Apprentices may only be upgraded to a maximum of twenty-four months out of the six years, and then only on approval of the foreman, the local union, and the president of the International Union.

Q. Is it not required generally, as it is in the case of our local contract, that this would be subject to the joint apprentice committee's approval? A. Where there is a joint apprentice committee, that would be the committee that would exercise the approval.

Q. Isn't one of the emergency situations taken into

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consideration in the interest of the Publisher, apart from the interest of the union, that due to military service, upon which so many apprentices have entered, and their veteran rights, the ratio of apprentices to journeymen not be put in imbalance when all the apprentices return at once?

* * *

Q. (By Mr. Sugarman). If you know about that consideration at all, tell us; and if you don't, you might say so. A. The returning service man caused considerable upgrading because they tried to make up in their training for lost time while they were in the service. That was the pur-

pose of increasing the amount that they could be upgraded from one year to two years within the last two or three conventions.

The upgrading of apprentices helped supply journeymen,

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but where there was not enough apprentices to meet the growing needs, and the employer hired people just willy-nilly, some of them who worked long enough and often enough acquired enough competency that the employer was willing to accept them, and then, under the section I read, subsection (g), Section 3 of Article 16 of the by-laws of the I. T. U., local unions were permitted to accept them as members.

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Q. (By Mr. Van Arkel) Just in line with what Mr. Sugarman was inquiring about, Mr. Randolph, do contracts generally provide that substitutes get paid less than journeymen? A. No.

Q. Or that apprentices get paid less than journeymen? A. Apprentices are on a graded scale, usually beginning with forty percent the second year, and running to ninety-five the fifth year.

Q. So, if an apprentice were upgraded to a journeyman, it would mean that he would be entitled to higher wages? A. Right.

Q. The employer would have to pay the higher wages? A. Right.

Q. The consent of the employer is therefore essential to upgrade an apprentice to a journeyman? A. Right.

Mr. Van Arkel: That is all.

Trial Examiner: Any further questions?

Mr. Richman: No, except that while Mr. Randolph is still here, I would like to move to amend those sections that I cited at the beginning of this proceeding as being attacked by the General Counsel as incorporated by

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reference into the contract.

I would like to add the following sections of the general laws: Article 1, Section 3—

Mr. Van Arkel: Of what?

Mr. Richman: The general laws.

Article 7, Sections 1 and 2; and Article 8, which has only one section.

I might add that I have, as the record will show, interrogated Mr. Randolph concerning all of these sections.

Trial Examiner: In other words, you have no further questions in view of your motion to amend?

Mr. Richman: That's right.

Mr. Van Arkel: I object to that. We have concluded with the testimony of Mr. Randolph and now we hear that the complaint is going to be amended.

Trial Examiner: The Bill of Particulars is amended.

Mr. Van Arkel: This is an awfully late time to do it when the principal witness on this matter has concluded his testimony.

Trial Examiner: With the General Counsel's statement that he has no further questions.

Mr. Van Arkel: That doesn't help my situation.

Trial Examiner: Your objection is noted for the record.

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Q. (By Mr. Van Arkel) Mr. Randolph, do you have with you a copy of the law? A. Yes.

Q. Are you looking at the 1956 laws? A. Yes.

Q. Reference has been made here to Article 1, Section 3 of the general laws, which states that: "Upon application of apprenticeship, all such apprentices must subscribe for and complete the lessons in unionism within ninety days within the date of registration as provided in Section 10 of this article."

Are the course of lessons in unionism referred to there the same as those referred to in Section 10 of Article 1, Mr. Randolph? A. Yes.

Q. Notably, this course of lessons should include the course on trade unionism? A. Yes.

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Q. I note that Section 10 states that: "Beginning with the second year, apprentices shall be enrolled and complete the International Typographical Union course of lessons in printing."

Is that also the requirement of Section 3? A. Section 3 is to exempt mailer and machinist apprentices from the course of lessons in printing for printers. It requires that they should take the lessons in unionism, and they take them at the beginning of their second year when they apply for apprentice membership.

In other words, if they apply for apprentice membership, they subscribe for the lessons in unionism, which is a part of their requirement for apprentices.

Q. If they are printer apprentices, also for the course of lessons in printing; is that correct? A. Right.

Q. Does that requirement apply to an apprentice who does not apply for apprentice membership? A. No, it

wouldn't, although I don't know of any that haven't applied. It wouldn't apply if he didn't want to apply for apprentice membership.

Q. Is there anything in the laws which requires apprentices to become members of the I. T. U.? A. No.

Q. Turning to Section 7 of Article 1, "At the end of the

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first year, if the apprentice proves competent and the foreman and apprentice committee recommend him for apprenticeship membership, he must be admitted into the Union as an apprentice member."

Does that mean that the local subordinate union has no choice but to admit him if he applies? A. All things being proper as regards his character and competency to become a printer; that is if there is no argument about it. Actually, I have known of no argument about it. There have been no appeals that have come up on that point. Inasmuch as the union and the employer are represented in the recommendation, it just operates automatically.

Q. But if the apprentice were otherwise qualified, I take it the meaning of Section 7 is that a subordinate union must admit him into the union as an apprentice member? A. Yes.

Q. Does Section 7 require that apprentices become members at the end of the first year? A. No.

Q. Turning to Article 7, Section 2, in machine offices under the jurisdiction of the International Typographical Union, is there any distinction between the word "jurisdiction" as used in the general laws of the I. T. U., and specifically in this section, and the term "appropriate bargaining unit"?

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A. No. We have been using the words "jurisdiction," and "the appropriate bargaining unit" together in our contracts.

I may say that the sections mentioned do not indicate all of the work procedures over which we exercise jurisdiction. That is found in other sections of the general laws.

Q. You say that it has been common practice in contracts to include a provision that "the jurisdiction of the unit and the appropriate unit for collective bargaining are defined as", and then specifying the particular work tasks covered thereby? A. Yes.

Let me add that the word "jurisdiction" is handled two ways in the book of laws. We refer to a geographical jurisdiction of a local union as the corporate limits of the city within which it is located, unless it is extended by authority of the council.

That word "jurisdiction" refers to geography.

Trial Examiner: Territory?

The Witness: Yes.

The other one refers to work processes.

Q. (By Mr. Van Arkel) Would it be possible to enter into a collective bargaining agreement without defining what jurisdiction was covered by such an agreement?

Mr. Richman: Objection, unless it is made more specific. Has any local ever entered into that

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agreement—anything is possible.

Trial Examiner: To your knowledge?

A. We will say it is not legal for any union to do that. The jurisdiction must be covered in any contract that is approved by the president of the I. T. U.

Q. (By Mr. Van Arkel) If a collective agreement is to have meaning, is it true that that collective agreement must spell out the work tasks which are to be covered by the agreement? A. That is true.

* * *

FURTHER RE-CROSS EXAMINATION:

Q. (By Mr. Richman) In Article 1, Section 11 of the general laws, it is provided that: "Starting with the second year, apprentices are entitled to, and must be in possession of an apprentice working card."

Who issues that working card? A. The secretary of the local union.

Q. Is it issued upon application by the apprentice? A. It is issued to those apprentices who have become apprentice members as a matter of course.

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Q. Only members? A. Only apprentice members.

Q. It is not issued to any apprentice who has not become a member? A. It wouldn't be. You are asking about something that I don't know has ever happened. I can only say that if an apprentice refused to make application for apprentice membership, it wouldn't interfere with his continuity as an apprentice, but he wouldn't be getting a working card as a union apprentice member.

A union journeyman has a working card in his possession at all times.

Q. Am I correct, then, in assuming that without such a working card, an apprentice wouldn't be able to be employed in any shop? A. No. I just testified to the contrary.

Q. I am showing you General Counsel's Exhibit 3, Section 2(a), and I just want to check with you to see whether

the term "appropriate bargaining unit" is used there in conjunction with jurisdiction. A. It doesn't appear to.

Q. Therefore, there are contracts which you have approved which don't contain those two phrases which you say usually are found in contracts? A. Obviously, this one is. We generally try to get it

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in there. It is not so vital that we would stop a contract for not having it in there.

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JOHN McCARTHY, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) * * *

Q. By whom are you employed? A. Dow Jones and Company, Inc.

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Q. Does Dow Jones publish the Wall Street Journal? A. It does.

Q. What position do you presently hold? A. National production manager.

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Q. During the year 1956, was the Wall Street Journal a party to a contract with the New York Mailers' Union No. 6? A. During 1956?

Q. Yes. A. Yes, sir.

Q. Did this contract have any relation to the agreement marked General Counsel's Exhibit 2, which is the agree-

ment between the Publishers' Association of New York City and New York Mailers' Union No. 6, effective December 8th, 1954, and expiring December 7th, 1956? A. Yes, sir, it did. We have a memorandum agreement with several conditions that apply specifically to Dow Jones, but it does incorporate by reference most of the terms and conditions of this master contract.

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Q. Who is in charge of the mail room at the Wall Street Journal? A. Mr. Milo Every; he is the foreman.

Q. Was he the foreman in 1956? A. He was, sir.

Q. He still is the foreman? A. Yes, sir.

Q. Who is the chapel chairman? A. Presently, I am not sure.

Q. Who was the chapel chairman in 1956? A. Mr. Edward Mitchell, I believe.

Q. Are you acquainted with the hiring practices in the mail room? A. In a general way, yes, sir.

Q. Do you know in what order mailers are hired for work at the mail room? A. It is normal that we have a complement of men

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determined by the size of the paper.

Q. Do they have any other name? A. They are referred to as regular situation holders.

Q. What happens to them? A. They are normally employed every night. We have a minimum crew beyond which we don't go below.

Q. Suppose you need more than this minimum crew? A. Then there is a list of priority substitutes who are hired when we need additional men because of the size of the paper.

Q. Is there a physical priority list in the mail room? A. I don't know of it. I never seen one physically, but I understand there is such a list.

Q. After the substitutes, who is hired, to the best of your knowledge? A. Anybody who shapes up, itinerant help, and they grab help wherever they can get it.

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Q. (By Mr. Richman) Mr. McCarthy, I show you General Counsel's Exhibit 11(a), (b) and (c) for identification, and ask you whether those constitute the records of these individuals' employment during the year 1955 and during the year 1956, up to approximately the first week of November, 1956? A. Yes, sir. These appear to be the records I received from the payroll department.

Mr. Richman: I offer them in evidence.

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Trial Examiner: All right; they may be received with that qualification.

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Q. (By Mr. Richman) I show you General Counsel's Exhibit 12 for identification, and ask you whether that information was taken from the records of the Wall Street

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Journal? A. Yes, sir. This is the record that the assistant secretary of the company gave me. He has custody of these records, and he gave them to me from the records of the company.

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Mr. Richman: Just to save further discussion, I offer this exhibit for the date of first employment in 1956.

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Trial Examiner: There being no objection, it may be received in evidence.

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CROSS EXAMINATION:

Q. (By Mr. Sugarman) Do you know of any instructions that were given to your foreman by the management as to conforming with the requirements of the Taft-Hartley Law? A. No, sir.

Q. Or in a more general way about not discriminating against people in the matter of their employment? A. I have no knowledge of any instructions given to the

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foreman one way or the other, sir.

Q. Do you have any knowledge as to whether the publisher, from March 18th, 1956 or thereabouts, and prior thereto, until May 23rd, 1957, or to any other date, had any agreement with Mailers' Union No. 6 requiring Dow Jones to employ only members of that union? A. You lost me. I wonder if you can repeat that.

Q. Do you have any knowledge as to whether Dow Jones had any such agreement with the union requiring Dow Jones to employ only members of the union? A. No, sir.

Trial Examiner: When you say "no, sir," do you mean you have no knowledge?

The Witness: I have no knowledge of any agreement.

Q. (By Mr. Sugarman). To your knowledge, was there any agreement with the union by which Dow Jones obligated itself to hire only and employ only members of the union? A. No, sir, we don't.

Q. Was there any such agreement with the union to hire members of that union on a preferential basis? A. No, sir.

Q. That is, in preference to persons who were not members of that union? A. No, sir, there is not.

Q. Did Dow Jones obligate itself by agreement, or did it

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make any agreement with the union by which Dow Jones delegated to the union the maintenance of a seniority and priority system of employees in the mail room? A. No, sir.

Q. Since March 18th, 1956, or thereabouts, or at any time prior thereto, did Dow Jones maintain with the union an arrangement or an understanding or a practice by which Dow Jones was required to hire only members of the union? A. No, sir, I don't believe it did.

Q. Did it have any such arrangement, understanding or practice by which it was compelled, or undertook to accord preference in hiring and in the retention of employment, to members of the union? A. I would have to qualify an answer to that, sir. I actually am not too familiar with the actual hiring practices. That is delegated to the foreman as management's representative.

I am aware of the fact that the normal complement of people are union men and always have been. I am aware

that the normal priority substitutes are usually union men; but they are not in all cases.

I don't know what motivates the foreman to hire one man, or priority substitutes, over another man. He has no instructions from the management to prefer union men over non-union men or non-members of the Mailers.

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Q. The foreman is the management's representative in your eyes? A. He is, yes, sir.

Q. Is it simply by virtue of the contract, or is he in practice the management's representative? A. He is in practice, the same as any other department head that we have in our organization that is in charge of the responsibility of his department.

* * *

Q. (By Mr. Sugarman) Let me ask you this, Mr. McCarthy:

Are you aware that the Dow Jones people, as publishers of the Wall Street Journal, are accused, without formally being made a party in this proceeding, of entering into an unlawful agreement with the Mailers' Union, and of having an unlawful arrangement, understanding and practice with the

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Mailers' Union, and enforcing it with the Mailers' Union, in respect of terms and conditions of employment? A. As a result of the complaint that has been issued in this case?

Q. Yes. A. Yes, I am aware of it.

Q. You are aware of that? A. Yes, sir.

Q. Are you sufficiently aware of the manner of hiring, and the manner of retaining people in employment by your

representative, the foreman, to be able to say whether or not you have any such agreement or arrangement or understanding or practice with the union as is charged in the complaint?

Mr. Richman: Objection.

A. I am not—

Trial Examiner: The question is, are you sufficiently familiar with it?

The Witness: I am not familiar with the hiring practices as such. My particular job is more of an administrative one than it is an operational one.

Q. (By Mr. Sugarman) Is there anybody but the foreman who might know about this in the topside of management? A. Possibly the production manager, who, I might add, is an I.T.U. member.

Q. Are you, by the way?

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A. No, sir, I am not.

Q. Or of any other union, if I may ask? A. No, sir.

Q. So far as you know, there is no arrangement or understanding or practice in effect and enforced by Dow Jones delegating to the union the maintenance of the seniority and priority system of mail room employees?

Mr. Richman: Objection.

A. To the best of my knowledge.

Trial Examiner: The witness has answered that to the best of his knowledge he doesn't know of the existence or the lack of existence of these kind of arrangements.

Q. (By Mr. Sugarman) Whatever is done in respect of that—

Trial Examiner: Is that your answer?

The Witness: Yes, sir.

Q. (By Mr. Sugarman) Whatever is done in respect of hiring and retention in employment in the mail room, is done by the management through its foreman? A. That is correct.

Q. He is responsible directly to whom? A. The production manager, Mr. Capps. He is production manager of the New York Division.

Q. Does the echelon, then, go up through you? A. Yes, sir.

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JULIUS ARRIGALE, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) What is your full name, please? A. Julius Arrigale.

Q. Your address? A. 541 East 147th Street, Bronx.

Q. Where are you working at present? A. At Shapiro's Printing Shop on 149th Street and Third Avenue.

Q. What is your position? A. Chauffeur.

Q. During 1956, where were you working?

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A. At the Wall Street Journal.

Q. Did you have a day job during 1956? A. Yes. I was working in a grocery store.

Q. During the whole of 1956? A. Yes.

Q. Is that grocery store owned by any relative of yours? A. Yes; my mother.

Q. When did you begin to shape at the Wall Street Journal? A. In 1956.

Q. You began to shape at the Wall Street Journal in 1956? A. No; that is when I had quit—I mean I had left there on account of some problems at home. I had started in 19—I can't recall it right now. I believe it was in 1955.

Q. Was it the beginning of 1955? A. I can't recall.

Q. Do you know whether you ever shaped in 1954 at the Wall Street Journal?

Mr. Sugarman: May we have a definition of what is meant in the question by the word "shape" as this witness understands it?

We have had some understanding among ourselves, but—

Trial Examiner: There has been testimony in the

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record as to what the term means.

Mr. Sugarman: Does the witness know what it means? I will have to reserve it for cross examination.

Trial Examiner: Suppose you tell us what you understand by the phrase "shape" that Mr. Richman has been asking you about.

The Witness: If the paper needs somebody else, as far as I know, that you hang around and see if they need somebody else. If they need you, they take you and you work. That is the way I mean "shape."

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Q. (By Mr. Richman) Mr. Arrigale, do you recall whether or not you shaped first at the Wall Street Journal in 1954 at the close of that year? A. Well, I believe so. I started shaping in 1954, and I left in 1956.

Q. Do you have any relation working at the Wall Street Journal mail room? A. Yes; a brother-in-law.

Q. Did this brother-in-law have anything to do with your coming down to shape at the Wall Street Journal? A. Yes. He told me that I could get some work down there, and he brought me down there and introduced me to the shop

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chairman down there.

Q. Would you speak up, please? A. He introduced me to the shop chairman. He said if he can possibly give me a couple of days, if it is possible.

Mr. Sugarman: Are we to get an identification?

Q. (By Mr. Richman) Who is your brother-in-law? A. Otto Nutini.

Mr. Sugarman: He is the shop chairman?

Mr. Richman: That is not the shop chairman.

Mr. Sugarman: Then he also referred to a shop chairman.

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Q. From the time that Mr. Nutini took you down, did you begin to shape the Wall Street Journal mail room?

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A. When he took me down, yes. I had shaped the Wall Street Journal after that.

Q. How many nights a week did you shape? A. Five nights a week.

Q. How many nights a week does the mail room work? A. Five nights a week.

Q. Therefore, you shaped every night that the mail room worked? A. That is correct.

Q. Did you miss any nights? A. I missed two days out of two years.

Q. When did you stop shaping at the Wall Street Journal mail room? A. Well, I had put in a complaint about it, and—you mean when I had stopped?

Q. About when did you stop shaping at the Wall Street Journal mail room? A. In 1956.

Q. What part of 1956? A. At the end of 1956.

Q. Was it about the time you put in your complaint at the Labor Board? A. Yes, right after that.

Mr. Richman: General Counsel's Exhibit 1(a) indicates that the charge was filed on September 17th, 1956.

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The Witness: That is correct.

Q. (By Mr. Richman) Is it your testimony that you stopped shaping at the Wall Street Journal mail room shortly after you filed this charge? A. That is correct.

Q. During 1956, during the time you shaped, were there any people shaping there who were, to your knowledge, not members of the union? A. When I had started, there was one guy there, but he had left not too long after I started shaping. So I was about the only one there that was actually a non-card man.

Q. When did the shape take place at the Wall Street Journal? A. When?

Q. What time? A. From six to 6:30.

Q. When did you usually arrive? A. I got there about a quarter to six.

Trial Examiner: That is at night?

The Witness: Yes, at night.

Q. (By Mr. Richman) Where does the shape take place? A. In the mail room.

Q. Could you tell me what happens at the shape? A. Like what?

Q. What happens at six o'clock?

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A. Well, at six o'clock most of the guys show up, and I guess the regulars come in and they sign up.

Q. What do they sign? A. They sign a slip with their names right next to it.

Q. Where is this slip? A. It is on a table.

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Q. (By Mr. Richman) Mr. Arrigale, did you ever take a look at this slip that the men signed? A. I had to when I signed up because I had worked that night.

Q. I show you General Counsel's Exhibit 13 for identification, and ask you whether that was a copy of the slip in use in the mail room at about September, 1956. A. Well, I don't know if this is incorrect or not, but this is the way it is. This is exactly the way it is.

Q. Is this a copy of the slip that you saw in use? That is my question.

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A. Yes.

Mr. Richman? I offer it in evidence.

Mr. Sugarman: This is the slip that he signed up with; is that what you mean?

Mr. Richman: That he saw in use at about September of 1956.

Mr. Sugarman: Did you say, Mr. Arrigale, that that is the slip that you signed when you did get work there?

The Witness: The slip is a little wider than that.

Mr. Sugarman: Is this the slip that the regular situation holders signed, as you said?

The Witness: That is the slip that they had signed up for a night's work.

Mr. Sugarman: Was this on the table in the mail room?

The Witness: No.

Mr. Sugarman: I don't believe this has been identified.

Mr. Richman: Let me withdraw this document. I will resubmit it through a later witness.

Q. (By Mr. Richman) You say the regulars signed a slip on the table; is that right? A. Yes.

Q. What happened after that at the shape?

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A. If they need more men, they go down to the subs.

Q. Who is "they"? A. The union men.

Q. No. Who goes down to the subs? A. Like that time, the guy was the shop chairman.

Q. At what time? A. At the time he was hiring the men.

Mr. Sugarman: I would like to have the name of this man identified.

Trial Examiner: You said if they need more men. Who do you mean by "they"?

The Witness: This was the shop chairman and the foreman there.

Q. (By Mr. Richman) Who was conducting the shape? A. The shop chairman.

Q. Was he doing the hiring? A. Yes.

Q. During 1956? A. That's right.

Q. Did he do it every day? A. I would say ninety percent of the time I was there he was doing the hiring.

Q. Do you see Mr. Mitchell in the room? A. Yes, I do.

Q. Was Mr. Mitchell the one that was doing the hiring?

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A. Yes, he was.

Q. Was he hiring the regular subs? A. Yes, he was.

Q. Did he hire anyone else but the regular subs? A. As far as I know, he hired most everybody that was supposed to go to work.

Q. You say he hired most everybody who was supposed to go to work.

Who would that be? A. Usually, the regulars come in and they sign up. Then if they need more men, they go down to the subs.

Q. Who is the "they"? A. The subs.

Q. Who are you referring to? A. The shop chairman goes down to the subs.

Q. What does he do when he goes down to the subs? A. I guess he goes by the priority on the list and he tells so-and-so to go to work.

Q. Did you ever hear him tell a particular person to go to work? A. Yes; I was standing right there.

Q. Was this person a regular sub? A. As far as I know, he was a sub.

Q. Is there any other person that you saw Mr. Mitchell hire in addition to regular subs?

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A. Say that again?

Q. Did you see Mr. Mitchell hire anyone else for work in addition to regular subs? A. Yes, he did.

Q. Who? A. Card men from other shops.

Q. How do you know they are card men from other shops? A. Most of the time the fellows know each other and they talk about it and I overheard it.

Q. Do you know some of the card men from the other shops? A. I know their faces, not their names.

Q. Do you know that they are card men for a fact? A. I never seen their cards. I can't say that he is a card man.

but I have been shaping there two years, so if he goes before me, I presume he is a card man.

Q. Why do you presume he is a card man? A. Well, usually they hire men from other shops that belong to the union before non-card men.

Q. Did you see Mr. Mitchell hire these people who you think are card men from other shops? A. Yes, I have.

Q. Did Mr. Mitchell ever hire you? A. Yes, he has.

Q. When he hired you, what did he tell you to do? A. He told me to sign up.

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Q. What did you do? A. I went to the slip—I guess they call it the payroll slip—to sign up, so I signed up.

Q. When you were hired, were there any of these card men from outside shops waiting to be hired?

Mr. Sugarman: He doesn't know of any men with cards from outside shops.

The Witness: I said that I presumed. They had gone on before me. They were hired before me.

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Q. (By Mr. Richman) Were there any of these men who you say were card men from outside shops waiting around to be hired at a time when you were put on? A. Were they hired before me or after me?

Q. Put it that way: Were they hired before you or after you? A. They were hired before me.

Q. In all cases? A. In all cases, yes.

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Q. (By Mr. Richman) Mr. Arrigale, during 1956, up until the time you stopped shaping, was Mr. Every, the

foreman, present at the shape? A. He was around, either in his office or he was on the floor sometimes.

Q. With respect to where the shape was taking place, was he present there? A. Sometimes he wasn't, and sometimes he was.

Q. Was he there most of the time, or was he not there most of the time? A. I would say he wasn't there most of the time.

Q. When he was there, did Mr. Mitchell still tell subs to go to work, and did Mr. Mitchell still hire you? A. That's right.

Q. Did Mr. Mitchell ever wait for any length of time after hiring his last man before putting you on? A. He usually waits until about 6:30 to see if any more card men comes in.

Q. How do you know he is waiting for that reason? A. Because it happened a couple of times.

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Q. What happened a couple of times? A. That a card man comes in late and he will put him on before me.

Q. Is it a card man who is a regular sub or a regular situation holder at the Wall Street Journal? A. Let me put it this way: Sometimes, I guess, a card man from another shop calls up, and he says—

Mr. Sugarman: May I interrupt?

He is guessing. I would think that the Board would honorably move to dismiss its own case.

Trial Examiner: We don't want you to tell us what you guess or what you imagine, just only what you actually know.

The Witness: All right.

I wait until 6:30. Usually, if nobody shows up at 6:30, I am supposed to go to work, as far as I know.

If I wait past 6:30 and a card man comes in, a card man goes to work.

Q. (By Mr. Richman) Have you ever waited past 6:30? A. Yes, I have, a few times.

Q. Has a card man, to your knowledge, ever been hired? A. Yes, he has.

Q. During the summer months of 1956, were vacations taken by the regular situation holders and regular substitutes of the Wall Street Journal?

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A. Yes, there was.

Q. Did any man come into the shop and be put to work who had not been working in the Wall Street Journal before, as far as you remember? A. You mean as card men or non-card men?

Mr. Sugarman: May I enter my objection once again?

This man has had it drilled into him by somebody—and I am not suggesting that it was by Mr. Richman or by Mr. Kull, but he has had it drilled into him—that they were card men.

Did he ever see any cards? How does he know their identification?

The Witness: May I say something?

Trial Examiner: Yes.

The Witness: How am I supposed to know they are card men? They are going to bring their card over to me?

Mr. Sugarman: Why do you call them card men?

The Witness: I will tell you why. Because if a man goes to work before me, he must be a card man.

Mr. Sugarman: Okay.

Now won't Mr. Richman move to dismiss his own complaint?

Mr. Richman: I am not going to answer that, Mr. Sugarman.

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Trial Examiner: Proceed.

Q. (By Mr. Richman) Is there a union bulletin board at the Wall Street Journal? A. Yes, there is a union bulletin board.

Q. Did you ever see anything on that bulletin board called a priority list? A. Well, I glanced through it once in a while. I think I glanced through it about twice since I have been there.

Q. Is your name on it? A. No, it ain't.

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Q. (By Mr. Richman) What kind of work did you do at the Wall Street Journal mail room when you were hired? A. There is a few different jobs there.

Q. Could you describe them very briefly? A. First of all, the paper comes off the conveyor and you take them out into either fifties or twenty-fives and put them on the belt. Then there is a man that takes them off the belt and puts them on a table. There is another man that takes them from the table and jogs them.

Q. What do you mean by "jog"? A. Straightens them out. He hands them to the machine operator.

Q. Then what happens? A. Then every fifteen minutes they switch you around to each different job.

Q. Which men switch around? A. The men go from the conveyor to the belt, and on the table. They all switch around.

Q. Did you do this work on the conveyor? A. Yes, I have.

Q. Did you do this work taking them off the belt and putting them on the table? A. Yes, I have.

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Q. Have you done this work which consists of picking up the paper and jogging them? A. Yes, I have.

Q. Are the machine operators, to your knowledge, the regular situation holders? A. Yes, they are.

Q. When you see these people who you say are card men coming in and going to work at the Wall Street Journal, what jobs do they perform when they go to work? A. They do the same job I do.

Q. You mean on the conveyor? A. Yes.

Q. Jogging? A. Yes.

Q. Taking off the belt? A. Yes.

Q. Were you ever told that your work was no good? A. No.

Q. Were you ever told that your work was good? A. No.

Q. Do you remember definitely whether you shaped for a week or more after you filed this charge here on September 17th? A. I believe it was about a week or two after.

Q. You continued shaping?

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A. Yes, I did.

* * *

CROSS EXAMINATION:

Q. (By Mr. Sugarman) Do you know the name of anybody at all among these men you guess are card men who went ahead of you? A. Let me explain it to you this way: It is two years—almost two years—since the case.

How am I supposed to remember those kind of names? At that time I would have known the names, yes.

Trial Examiner: Right now you don't remember?

The Witness: Right now I don't remember the names.

Q. (By Mr. Sugarman) You filed your charge September 17th, 1956. That isn't two years ago, is it? A. Let me put it this way: There are men going in and out of the shops, and am I supposed to remember all of their names? I hardly meet them.

Q. When you filed your charge just before or just after, you came up here to the Labor Board to do that, didn't you? A. Yes, I did.

Q. You didn't just drop it in a window; you talked to somebody, didn't you? A. Yes.

Q. Didn't he ask you about the names of people?

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A. I think Mr. Kull did, yes.

Q. Didn't Mr. Kull ask you the names of these people? A. Yes. I gave him the names.

Q. So that you did give the names at that time? A. That's right.

Q. If you saw what Mr. Kull wrote, if that were shown to you by Mr. Richman, you would remember the names, wouldn't you? A. That's right.

Mr. Sugarman: Mr. Richman, do you want to show him the names?

Mr. Richman: Delighted.

Will you take a look at this paragraph, Mr. Arrigale (handing document to witness)?

(Witness examines document.)

Q. (By Mr. Sugarman) Is your memory now refreshed?

Trial Examiner: Do you remember some of the names now?

The Witness: Can I state something?

Q. (By Mr. Sugarman) Mr. Arrigale, will you put that paper on the table?

Now can you give me the name of anybody who went ahead of you? A. That was from outside shops?

Q. Anybody who went ahead of you at all.

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A. Dick Gifford.

Q. Dick Gifford went ahead of you? A. Right.

Q. Did you know Dick Gifford? A. Yes, I did.

Q. How long had you known him? A. I known him since I had been shaping in the shop.

Q. How long had he been shaping the shop, so to speak? A. I heard about fifteen or twenty years.

Q. He had been working pretty regularly? A. Yes, sir.

Q. Was he shaping five nights a week too? A. Yes, he was.

Q. And catching work pretty regularly? A. Yes, he was.

Q. Do you know whether he worked as many as three or four or five nights a week? A. Yes, he did.

Q. What kind of work did he do? A. The same work I was doing.

Q. And anything else? A. Nothing else.

Q. You never saw him do anything else? A. Unless he had what they called scraping the paper.

Q. You never scraped paper, did you?

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A. No.

Q. That is a special kind of skill? It is sort of a trick

that you have to learn? A. They don't let a non-card man do that.

Q. You never did it? A. I have done it at all other papers, yes.

Q. You say they don't let a non-card man do it. You are not a card man? A. That's right.

Q. They never let you do it? A. That's right.

Q. Tell me about another non-card man who was not permitted to do it. A. I don't know of any.

Q. Did Dick Gifford hold a card in this union that you know of for a fact? A. Yes.

Q. Did he show it to you? A. No, he didn't show it to me.

Q. How do you know it? A. He told me.

Q. He told you that he was a member of the union? A. Yes.

Q. Did he tell you when he had become a member of the union?

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A. No, he didn't tell me that.

Q. Did he work at some other newspapers as well? A. Yes, he has.

Q. He has had pretty wide experience around the newspaper industry? A. As far as I know.

Q. Did you ever work at any other newspaper? A. Yes, I have.

Q. Which one? A. I worked at the Tribune, the Journal, the Times, and the News, and that's about it.

Q. How many times did you work at these different newspapers? A. I couldn't quote offhand. The Tribune, I was shaping when I was sixteen. I was shaping them pretty regularly.

Q. That was long before you went to the Wall Street Journal? A. That's right.

Q. What about the News? A. The News, I was—I had shaped there for a couple of weeks, and I got a couple of days on at the News.

Q. Where did you shape, over in Brooklyn? A. No.

Q. Did you ever try shaping in Brooklyn at the News?

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A. I heard they had a good shape over there, and sometimes from New York they send you to Brooklyn if they are short over there; but I was working in New York.

Q. You never tried Brooklyn? A. I never tried Brooklyn.

Q. When did you work at the News? A. That was about in 1954.

Q. Before you ever turned up at the Wall Street Journal? A. It was the same time I was shaping the Wall Street Journal. If I walked, I went over there.

Q. You were shaping five at the— A. If I had walked from the Wall Street Journal, I went over to the News to see if I could get a day there.

Q. You walked at or after 6:30 at the Wall Street Journal? A. That's right.

Q. Then what time would you get over to the News or some other paper to shape? A. They have a later shape.

Q. How late do they shape at the other paper? A. I can't recall offhand.

Q. What about the Times? Did you ever work there? A. Yes. The Times I worked on Friday and Saturday.

Q. Friday night? A. Friday and Saturday, Friday day and Saturday day.

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Q. You have never worked over there at night? A. No, I haven't.

Q. What did you do at the Times? A. At the Times, they have what you call like an inserting machine, and they have this what you call—they have the books and the papers lined up, like magazines, and they have these slots that go into it and you have to take these books and put them into a slot. That is all you do. The machine does the rest.

Q. You just heft them off a skid, do you? A. Yes, off a skid.

Q. And then you just drop them someplace? A. Into this square thing where it keeps them nice to go in.

Q. Who, by the way, hired you at the New York Times? How did you get there? A. I don't know his name.

Q. How did you do it? Did you get on a shape line? A. There is a bunch of guys there and they stand around and they take the card men first and if there is non-card men, they just pick out whoever is there.

Q. Do they wear cards or union buttons? A. No.

Q. How do you know they are union men? A. At the Times, the union men just walk over and sign

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the slip and non-card men stand back and wait.

Q. That is the word that goes around? A. No; I saw that.

Q. Wait a minute.

How could you identify any of these men as union men simply because they signed in first? A. Because as far as I know, a non-union man cannot go over to that slip and sign up, which a card man can go over to the slip and sign up. So that that presumes that he is a card man.

Q. If you happened to get by whoever was there and sign

up, you would be a card man then? A. No. The foreman knows more or less who is a card man.

Q. I mean, if the foreman is in the office, the way you said Every was in the office. A. You are talking about the Times?

Q. Yes.

What if the foreman happened to be away in the office, or had his back turned? A. You are talking about the Times, if the foreman is there at the Times?

Q. Did you have a foreman at the Times for the mail room? A. As far as I know, there is.

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Q. You never saw a foreman there? A. I seen a short, skinny, gray-headed guy.

Q. Did he tell you what to do or how to do it? A. No; he just signed me up.

Q. Did he ask you if you had a card? A. No, he didn't.

Q. Did you ask him where do the men without cards sign up? A. On this slip, one after the other.

Q. Who told you that you sign up? A. They show you where to sign.

Q. The foreman shows you where to sign? A. You just follow the next guy down.

Q What kind of work did you do at the News? A. At the News, all I did was work on the conveyor belts.

Q. What did you do, fly the escalator? A. Yes.

Q. That means taking the papers off as they come down the conveyor? A. And putting them on a table.

Q. That is a hefting job, isn't it? A. It is not heavy.

Q. As light as it is, some people complain about it as being heavy, but you find it very light? A. I don't find it that light. It depends on the pages.

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Q. Whatever the weight may be—and that varies from time to time, depending on the size of the paper and so on—whatever the weight is, all you do there is take a certain number of papers; is that right? A. Yes.

Q. Do you count the number of papers? A. No. There is a kick sheet.

Q. Is that something which indicates— A. That is a sheet of paper that sticks out and that indicates how many papers are there.

Q. Wherever that kick sheet is, you scoop the papers from that kick sheet forward and you just take them off and you turn around and put them on a table? A. That's right.

Q. That is the only work you ever did at the News? A. That is all I did at the News.

Q. What did you do at the Tribune? A. I was flying all the time.

Q. The same thing? A. Yes.

Q. Were there any other papers you mentioned? A. That's it.

Q. At the Wall Street Journal, all you did was the same thing, besides which you also jogged the papers so as to get the stack pretty straight and even all around?

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A. Yes, sir, that's it.

At the Times, just one day I tied up in the Times. That was for a couple of hours.

Q. What is tying? A. We tied bundles up, so many bundles.

Q. You tie them with what? A. With a rope or cord.

Q. Do you make a bow knot or something on it? A. There is a special way they have of tying it up.

Q. Who showed you how to tie, or do they just say "Tie this," and give you some rope? A. My brother-in-law had showed me how to tie up, so I know how to tie up.

Q. You did it once at the Times? A. That is the only time I have ever tied up in the newspaper business, and that was over at the Times.

Q. Once? A. Once.

Q. For how long on that shift? A. A couple of hours.

Q. That is all you did, tie bundles? A. That's right.

Q. With no interruption, you kept going, tying and tying? A. Unless you have a coffee break.

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Q. Was there ever a stop between editions? A. Yes, there are stops if the papers are not counted right, or if the papers are not in the machine, it stops.

Q. Between editions, there is a stop and you sort of knock off? A. Yes.

Q. Do you go around learning something else about the trade? A. Well, I tried to practice home on the tie-up. I take papers and I try to tie up as fast as I could. The scraping, I have one of those scraping things, and I tried to scrape when I was home. But I have never done scraping in the papers.

Q. The tying up that you were practicing at home, did you have some old stack of papers that you saved? A. Yes.

Q. What did you do, get an ordinary piece of rope? A. I took some rope from the paper and I used their rope.

Q. The idea was to do it fast? You were practicing speed? A. Yes.

Q. At the Wall Street Journal, you said every fifteen minutes you switched around? A. Yes.

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Q. You switched from flying the escalator to doing what? A. To the belt.

Q. What did you do at the belt? A. The belt rolls the paper down and you take them from the belt and you put them on the table.

Q. Is that more difficult than flying the escalator? A. Yes.

Q. When you fly the escalator, you scoop the papers towards you and turn around and put them on a table? A. On a belt. The papers are already stacked up on the belt.

Q. But when you take them from the belt, they are already stacked and jogged by somebody else, and then you take them and put them on a table? A. That's right.

Q. After fifteen minutes of that, you go flying the escalator and go put them on the belt? A. You go from the belt to the tables.

Q. What did you do on the tables? A. On the table, you just straighten the papers out.

Q. And then you would go around again? A. You keep going around.

Q. You didn't practice that at home, did you? A. Jogging?

Q. Yes.

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A. I learned that the first time I went to the papers.

Q. Do you do that one-handed or two hands? Do you just pat them around, or is there a way of doing it? A. There is a knack of doing it.

Q. Then your brother-in-law showed you that? A. He showed me that when I first went to the papers.

Q. Did your brother-in-law ever show you his card in the union? A. I never seen his card.

Q. But he told you he is a member of the union, didn't he? A. Yes, he did.

Q. He signed up ahead of you? A. Yes.

Q. Is he what they call a regular situation holder? A. At that time he wasn't a regular situation holder; he was a sub. I believe now he is a regular situation holder.

Q. You went to the Labor Board here on September 17th, 1956? A. That is correct.

Q. And you filed that charge here? A. Yes, sir.

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Q. (By Mr. Sugarman) Were you here some day before September 17th? A. The day I seen Mr. Kull the first time; I don't know if it was September 17th. I couldn't recall the date actually.

Q. Let me ask you this, Mr. Arrigale:

That charge that you filed here was a printed form that you get from the Labor Board and you fill out, is that right, or somebody fills it out? A. I had come down here personally.

Q. Did you come down here for the first time on that same day that you signed it and filed it here, or had you come down some earlier day and told your story and then were told to come back on the subsequent date? A. Something like that.

Q. The second way? A. I come down here and I had told my explanation, and Mr. Kull was writing down some stuff. There was nothing that I had filled out.

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Q. Did they make an appointment with you to come back another time and he would have something for you to sign? A. That's right.

Q. Can you give us your best memory as to what day it was prior to September 17th?

Mr. Richman: Let me object to all this, and to all preceding questions and answers. I just don't see the relevancy. We have a charge.

Trial Examiner: I will let the testimony stand thus far.

Mr. Sugarman: I am getting now to what I wanted to connect this to.

Q. (By Mr. Sugarman) What made you come to the Labor Board? What had happened that made you come here?

Mr. Richman: Objection. There need not be anything special to have him come here.

Trial Examiner: I will let him answer.

A. Well, down at the shop there was a lot of things that brewed up, I guess.

Q. Something exploded one day and you came up to the Labor Board.

What was that explosion?

Mr. Richman: Objection.

Mr. Sugarman: That is my characterization of it. I think he understands me.

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Mr. Richman: I don't know if everyone reacts the same as you, Mr. Sugarman.

Trial Examiner: Do you remember whether anything special happened just before you decided to come and tell your story?

The Witness: I felt that I—to tell you the truth—

Trial Examiner: That is all we want, the truth.

The Witness: I don't remember.

Q. (By Mr. Sugarman) Did anybody tell you to come to the Labor Board?

Mr. Richman: Objection.

Trial Examiner: I will let him answer.

A. Nobody told me to come; nobody forced me to come here.

Q. Did anybody say, "Well, why don't you go to the Labor Board about that?" A. You mean about what was going on?

Q. About getting yourself a card in the union; that is what you were after? A. I wasn't after the card; I was just after work in the shop.

Q. Who told you if you want to get work at the shop to go to the Labor Board?

Mr. Richman: Objection. There is no such evidence.

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Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) You had a certain feeling. What was that certain feeling you had?

Mr. Richman: I will object. I don't see the relevancy of that.

Trial Examiner: I think you have now explored it sufficiently, so I will sustain the objection to this line of testimony.

Q. (By Mr. Sugarman) Did you want to get more work than you were getting, or did you just want to be sure to have as much work and hold on to as much work as you were getting? A. That's right.

Q. You wanted to hold on to as much work as you were getting? A. I just wanted to get some work, because I just got married and at the time my wife was having a baby, so I figured I would try to get as much work as possible.

Q. Did anybody give you a reason to fear that you were going to lose the work that you were managing to catch? A. I said at the beginning I was getting about three days a week, and then card men started to come down, so far as you say I don't know about card men. They came down and they started working, and that let me out.

Q. Is it possible that these men who started coming in

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had two babies instead of one?

Mr. Richman: Objection.

Trial Examiner: Sustained.

Q. (By Mr. Sugarman) Do you know the reason why they were given work? A. Let me explain something to you. They have a steady job. I didn't have a steady job. They were working, and they could have worked five in their own shop where I couldn't work five.

Q. How did you know where they work? A. They have to have a steady shop to be working in.

Q. You had a steady job, too, didn't you? A. I will explain that job to you during the day. My mother was sick and I had to take over the store during the day, and that wasn't paying me twenty-five dollars a week.

Q. These men had steady jobs someplace; you don't know where. They may have been in a lobster tail factory, or a foreman in a fish market? A. That's right.

Q. But they had a job someplace and they were just making something extra here, and you wanted to enjoy that same privilege for yourself; is that right?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) Did anybody tell you you couldn't

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have any more work because these men who hadn't come there before had to have it? A. No. The men that were knocking me out of work, so far as you call men that I don't know, they were card men.

Q. Like Gifford? A. Yes.

Q. And Gifford had been working there for about fifteen years? A. That's right.

Q. And he had been knocking you out for a long time, hadn't he? A. Yes.

Q. Did it ever occur to you to come to the Labor Board in 1954 or 1955 when he was knocking you out? A. No.

Q. Do you know a fellow named Burton Randall? A. Do I know him?

Q. Yes. A. I don't remember the name; I don't recall his name.

Q. You never met him? A. I don't know if I ever met him, but I don't recall his name.

Q. Do you know the name of the man who was the foreman before Mr. Every? A. I don't remember his name.

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Q. But there was a man there? A. There was a foreman before Mr. Every.

Q. While you were working there? A. Yes, there was.

Q. And Edward Mitchell was what you call the shop chairman? A. Not at that time, no.

Q. At which time, in 1954? A. When I first started, Eddie Mitchell was not the shop chairman. There was another shop chairman at the time.

Q. When did Eddie Mitchell become a shop chairman? A. I would say a few months, or maybe six months after he became shop chairman.

Q. Who told you he was shop chairman? A. They made a vote on it, and I was standing there and he was shop chairman.

Q. Were you in on the vote? A. No, I wasn't.

Q. Did you vote against him? A. I said I was not in on the vote.

Q. I thought they had an election while you were standing there. Is that what you just said? A. You are trying to be funny.

Q. Isn't that what you said? A. They didn't have an election while I was standing

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there.

Q. I am sorry; I misunderstood what you said. A. I just said that they were discussing while I was there; that is what I said.

Q. Did they call him a shop chairman? A. Yes, they called him shop chairman. They called him the chairman, not the shop chairman.

Q. No one told you that Eddie Mitchell was the foreman; is that right? A. No.

Q. You never mistook him for the foreman, did you? A. I never mistook him for the foreman.

Q. Did Mr. Every ever hire you? A. At the beginning when he first became foreman, he had hired me a couple of times, yes.

Q. That was before Eddie Mitchell's days; is that right? A. Yes.

Q. Did Eddie muscle in on this thing and take over the hiring? A. He didn't muscle in on anything. I don't say that he don't muscle in. He just happened to pick me to go to work. I don't know if they had made an agreement

between themselves. As far as I know, Eddie Mitchell liked me.

Q. Incidentally, just to get back to it for a moment, you said you weren't after a card in the union; you just

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wanted to work? Is that right? A. Yes.

Q. Do you know this gentleman sitting behind me, Mr. Smollon? A. I never met him.

Q. Were you ever to the union office? A. No, I wasn't.

Q. You never went up there with your brother-in-law? A. No, I didn't.

Q. Did you ever ask anybody for a card in the union or an application for a card in the union? A. No, I haven't.

Q. Did anyone ever ask the union for an application in your behalf—that is, for you? A. I don't know if anybody has. I don't know personally if they have done it. I don't think so.

Trial Examiner: Are you about through?

Mr. Sugarman: I think I am going to have some more cross.

Q. (By Mr. Sugarman) Do you have a brother named Joseph? A. Yes, I have.

Q. Is Joseph, so far as you know, a member of Mailers' Union No. 6? A. No, he isn't.

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Q. Does he work in the newspaper industry at all? A. Not now, no.

Q. Did he ever? A. Yes, he has in the past couple of years back.

Q. Did he shape, as you say, for work? A. Yes, he did.

Q. Did he ever work at the Wall Street Journal? A. A few times.

Q. Did he ever work there while you were working there? A. Yes, he has.

Q. Did they hire him ahead of you? A. At the time he had gone down there before me and he was only there a while, and he worked a few days before me, and then he had left and I had stayed down there.

Q. I am talking now about the nights when he worked and you worked. You both worked in the Wall Street Journal, do you remember that? A. Yes.

Q. Did you come in together? A. No, we didn't.

Q. Who came in first? A. My brother did.

Q. Did he sign in first? A. Yes, he did.

Q. Were you hired in that night, or did you walk?

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A. Well, there was a few times we have worked the same night. Most of the times we didn't work the same night.

Q. But he always signed in ahead of you; is that right? A. Yes.

Q. Was that because he was your big brother? A. No. I guess they were going by who was there first.

Q. You mean who comes there first that night? A. Not that night; I guess who shapes before somebody else, I guess, goes to work first.

Q. Sometimes there is some other reason why they go first, isn't there; or is that the only reason? A. The only reason I know is that a non-card man goes to work before another non-card man, is that if he has shaped there longer and has been there longer than this other person.

Q. And if somebody goes ahead of you, he must either have started working there at some earlier time than when you started, or he must be a card man? A. That's right.

Q. How do you know which is the case in respect of

any particular person other than your brother? A. As a non-card and a card man?

Q. How do you know what the reason is that someone goes ahead of you? A. The reason is that he has to be a card man, to me. That is

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the only reason I know.

Q. But you said if he started working at the Wall Street Journal before you started working there, he would also go ahead of you? A. You are talking about a non-card man, too?

Q. Anybody who goes ahead of you. A[illegible]e has to be there before me. He has to have his time in there, in the shop, before me.

Q. When in 1954 did you work at the Wall Street Journal? A. When?

Q. Yes. A. The exact date?

Q. Of the week, or the month. A. I couldn't tell you.

Q. If the employment record of the Wall Street Journal shows no work performed by you in 1954, do you say their records are wrong? A. In 1954? There is no record at all?

Q. Of your working in 1954? A. I believe so, yes.

Q. The record would be wrong? A. I am pretty sure I worked in 1954.

Mr. Sugarman: Do you concede that the record in evidence shows—

Mr. Richman: That was my reason for putting it in,

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so that we could avoid all this on trying to pin the witness down on exactly what date he started to work there.

Mr. Sugarman: You started to pin him down.

Mr. Richman: On the shaping.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sugarman: General Counsel's Exhibit 11(a) in evidence shows the earnings for Julius Arrigale for the first three-quarters of 1956 and the last quarter of 1955.

Q. (By Mr. Sugarman) You never worked there without being paid for it, did you? A. No.

Q. The work record shows that in the week ending March 15th, 1955, you earned $24.15? A. In what year?

Q. In 1955, the week ending March 15th.

Mr. Richman: Do you have to read that into the record, Mr. Sugarman?

Mr. Sugarman: Yes.

Q. (By Mr. Sugarman) Do you have any recollection of working that week? A. That week?

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Q. Yes. A. I have no recollection.

Q. Is it not a fact that the first time you ever worked at the Wall Street Journal was in the week of March 15th, 1955? A. It is if you have it on that paper; I guess it is right.

Q. And earnings of $24.15 were for one shift of work in that week; is that right? A. In that week or the one year?

Q. In the week ending March 15th, if you earned in that week $24.15 at the Wall Street Journal, that meant you worked one shift? A. That's right.

Q. You were never paid for less than one shift, no matter how little work you did? A. That's right.

Q. You were always paid for a full shift? A. That's right.

Q. And then if the record shows that in the week ending April 12th, 1955, you worked for the next time at the Wall Street Journal, with earnings of $34.16, would you have any recollection of that occasion? A. If you have it there, I guess it is right.

Mr. Richman: Mr. Examiner, I frankly fail to see the

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purpose of this.

Trial Examiner: I will sustain your objection. The document is in evidence. What is the point in asking him again whether he remembers?

Mr. Sugarman: I want to find out in my own way, and if it is not satisfactory to the Examiner, I will abide by his ruling.

Q. (By Mr. Sugarman) How many shifts did you work at the Wall Street Journal altogether in all the time you worked there? A. I couldn't tell you.

Trial Examiner: You don't remember?

The Witness: I don't remember.

Mr. Richman: Can I make a concession for the record, Mr. Sugarman?

Mr. Sugarman: If you would.

Mr. Richman: General Counsel is willing to concede that in 1955 Mr. Arrigale worked a total of seventeen shifts, and in 1956 he worked a total of twenty-three shifts.

Does that correspond with your information?

Mr. Sugarman: That is about correct.

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Mr. Sugarman: Will the General Counsel also concede that Mr. Arrigale was paid for twenty-three

shifts, but worked on twenty-two in 1956?

Mr. Richman: One shift, that difference being his vacation pay?

Mr. Sugarman: That is correct.

Mr. Richman: Upon Mr. Sugarman's explanation, which I have no reason to doubt, I make that concession.

* * *

Q. (By Mr. Sugarman) Do you know how many shifts any of the other men who were hired in ahead of you worked in 1955 or in 1956? A. I couldn't tell you, no.

Q. How many men usually turned up for the shape? Is it

a large crowd? A. No. It is a small shop, and not too many guys show up.

Q. About how many at the most that you ever saw? A. Maybe fifteen or twenty.

Q. At the least? A. The least would be two or three.

Q. Are you told to come in on a particular night on the possibility that you will get work? A. No. You are not told to come in no time.

Q. Do you get a telephone call? A. No, I never got a telephone call.

Q. Did you ever leave your telephone number with the foreman? A. No, I haven't.

Q. Or with anybody there? A. No.

Q. Your brother-in-law knew where to reach you though, didn't he, by telephone? A. Yes.

Q. Isn't it a fact that he sometimes did call you and say, "Come in, there is work for tonight"? A. I believe —let me put it this way: He called my home and he had told my brothers to come down for the work, not me.

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Q. Did he call you at the grocery store? A. He had called me at my mother's house.

Q. He called you at your mother's house? A. That's right.

Q. Did he ever call you at Shapiro's to come down to work? A. No. I just got the job about eight or nine months ago; not even that, it is about seven months ago.

Q. The last time you worked at the Wall Street Journal was during the week of September 4th, 1956; is that right? A. If you have it there, that is possible.

Q. Isn't it a fact that that was the last time you worked?

Mr. Richman: I concede that, Mr. Sugarman.

Q. (By Mr. Sugarman) You worked one shift that week? A. I couldn't tell you offhand.

Q. By this time, you weren't shaping any more, were you? You just came in when your brother-in-law told you that there would be work on a particular night? A. Shape when?

Q. During the last week or two that you worked there? A. When I put the complaint in here?

Q. No; just before. A. I had been shaping, yes.

Q. Every night?

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A. Every night.

Q. And you were being turned away except the one night that you did manage to catch? A. Yes, that's right.

Q. It was Mr. Mitchell who was turning you away? A. He wasn't turning me away. He said there is no more work. He ain't turning me away.

Q. He just made a general announcement that the work is all off? A. When he said "All loaded up," he has his shop covered.

Q. By this time, were you the only one around, and did you walk out by yourself? A. Not all the time, no.

Q. There were some others who were turned away? A. Yes.

Q. Were they men who started working ahead of you, at some earlier date than you? A. A union man or a non-union man?

Q. I don't know. A. Let me put it this way: In 1956, I was the only non-union man there as far as I know.

Q. There were no other non-union men shaping? A. That's right.

Q. That was all through 1956?

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A. With the exception of a couple of days, I presume.

Q. Were there any union men who didn't find any work, as far as you know? A. If the shop is covered, they have to turn away union men too.

Q. Do you know a man named Sam Curto? A. I remember the last name, Curto.

Q. Did you ever see him work there when you were working or when you were shaping? A. I don't know if it is Curto. I think it was something like Kurt. I wouldn't remember.

Q. Weren't there a couple of them? Wasn't there a Sam, and another man named Ignatio? A. I couldn't remember.

Q. Were they the men who usually worked ahead of you and who were hired ahead of you? A. I couldn't remember.

Q. What about Tom Hanson? A. Tom Hanson?

Q. Yes. A. Yes, he went to work before me.

Q. Was he a union man at that time? A. I don't know

if he was a union man at the time, but I know he went to work before me.

Mr. Richman: In what year was that? Can we have a

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date?

Mr. Sugarman: He said in 1956.

Mr. Richman: Was it in 1956, Mr. Arrigale?

The Witness: I couldn't tell you offhand.

Q. (By Mr. Sugarman) Robert Woods? A. He is an old man. He went to work before me.

Q. Was he a union man? A. Yes, he was, as far as I know.

Q. Did he tell you? A. No, he never told me.

Q. Did you just guess it? A. I didn't guess it. I figured whoever worked before me is a union man in that shop.

Q. If it is a fact that he was not a union man, you would be sort of surprised that you guessed wrong this time? A. Yes, I guess so.

Q. What about James Ruby? A. I don't remember that name.

Q. Joseph Heischuber—did you know him? A. I don't remember his name.

Q. Mickey Farber? A. I wouldn't remember.

Q. Michael Ford? A. I wouldn't remember. He has an—I wouldn't remember.

Q. Were you going to say he has a union card?

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A. I said I don't remember Ford.

Q. Did he go ahead of you? A. I don't remember. I don't recall the name.

Q. When did your brother Joe stop shaping there? A. A couple of weeks after he was brought down.

Q. After what? A. A couple of weeks after he was brought down to the shop, he had left it.

Q. He only worked there a couple of weeks? A. He only shaped there for a couple of weeks.

Q. Who introduced him to the hiring man? A. My brother-in-law.

Q. Who was the man that was doing the hiring then? A. At that time when he brought my brother down?

Q. Yes. A. I wasn't there when he brought him down at the beginning. I couldn't tell you.

Q. But in those couple of weeks? A. I wasn't there in those couple of weeks. I was there maybe about a week; I was there when he came down.

Q. You were shaping at the time your brother came in? You saw your brother in the mail room, didn't you? A. Yes.

Q. Who was doing the hiring at those nights? A. At that time, it was the foreman, I presume.

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Q. The man before Mr. Every? A. Yes.

Q. It wasn't Every? A. No, it wasn't.

Q. Was the newspaper as big and fat in the summer of 1956 as it had been in the spring and in the winter? A. I couldn't tell you.

Q. You don't remember? A. Not that I don't remember; I couldn't tell you. I ain't the publisher.

Q. Do you remember anything about how many men they were hiring during the summer, up to September? A. No; they never told me about it.

Q. Isn't it a fact that fewer men showed up for the shape? A. In the summer time?

Q. Yes. A. Usually, in the summer time the men go on vacation, and outside men usually come in.

Q. I ask you: Isn't it a fact that they hire fewer men in the summer time? A. I couldn't tell you.

Q. Weren't you told that there wouldn't be as much work in the summer time? A. Not that I remember.

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Q. Were you told that there would be more work? A. No.

Q. Nobody told you that since so many men would be going on vacation, that there would be plenty of work for you, in fact? A. There would have been plenty of work if the outside men wouldn't come in.

Q. But nobody discussed this with you? These things you had to see for yourself; is that right? A. That's right.

Q. These outside men who came in were men you didn't know, and you hadn't seen before; is that right? A. That is correct.

Q. They were just strangers to you? A. That's right.

Q. After you filed the charge here on September 17th, you continued to shape the shop, didn't you? A. Yes, sir.

Q. You were told to do that? Mr. Kull told you to keep going there and see what happens? A. I don't know if he had told me. I figured I needed money and I went down there and shaped. That was what I was doing.

Mr. Richman: I tried to get an objection in, sir.

Trial Examiner: I will let the answer stand.

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Q. (By Mr. Sugarman) Then didn't you have some feeling that you should have worked, or be allowed to work, on September 19th, that is, two days after you filed this charge? A. I said I should have?

Q. Yes. A. I don't remember me saying that I should have.

Q. Do you remember a man named Loughran? A. What is the first name?

Q. S. A. What is his first name, "S."?

Q. Sam.

Mr. Richman: Is it, in fact, Sam, Mr. Sugarman?

Q. (By Mr. Sugarman) Do you know any Loughrans? A. I think there are two of them; I ain't sure.

Q. Do you know at least one? A. I want to know his first name.

Trial Examiner: Do you know anyone whose last name is Loughran?

Q. (By Mr. Sugarman) If I gave you the first name, would you then know which man I was talking about if I only give you his first name? A. I couldn't tell you unless you told me his first name.

Q. Let's stop kidding about this.

Don't you know that one is senior and one is junior,

and that they both have the same first name? A. If you would call Loughran, you would say junior. Why didn't you say junior?

Q. Did you know any Loughran who worked at the Wall Street Journal, or whom you saw shaping there? A. I don't know him personally, no.

Q. But you know there is such a person? A. Yes.

Q. Did he work ahead of you on any night? A. I believe so, yes.

Q. Who, the father or the son? A. The son.

Q. Did the father? A. I said the son. I never seen the father.

Q. Had this man been working there long before 1954, as far as you know? A. I couldn't tell you.

Q. You guess he had a union card? A. I presume so, yes.

Q. Because he went ahead of you? A. Yes, sir.

Q. That is the only reason you would think so? A. That's right.

Q. What is the largest number of shifts you worked in any week?

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A. Five.

Q. You did work five? A. That's right.

Q. When was that? A. I don't remember the day. I know I worked five.

Q. That happened once, did it? A. That's right.

Q. How did that happen? A. I don't know.

Q. Did Mr. Every pick you? A. Mr. Every and Mr. Mitchell picked me around that time.

Q. Who was it? A. Both. It is a whole week, and they both told me to go to work during that week.

Q. You are pretty sure that was in 1956? A. That's right.

Q. It must have been, because Eddie Mitchell was there; is that right? A. That is correct.

Q. How much would you have earned if you worked five shifts, at a minimum? A. I couldn't tell you.

Q. One hundred dollars and more? A. About a hundred dollars.

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Q. And if your work record shows that the only time you earned as much as one hundred dollars, or more than seventy dollars, was in the week of October 18th, 1955, would you still say that Eddie Mitchell was one of the men who hired you? A. I couldn't tell you.

Q. But you are sure it was Eddie Mitchell and Mr. Every? A. I don't say he had picked me out all the time. I am saying he was doing the hiring most of the time. I don't say he picked me most of the time.

Q. Were you always, without any variation at all, at the tail end of the line, or were you ever hired in front of someone else? A. The only time I was hired in front of someone else was a non-card man. That was the only time.

Q. Did he figure that you must have been a card man because you were hired first?

Mr. Richman: Objection.

Trial Examiner: Sustained.

Q. (By Mr. Sugarman) Did he tell you that?

Mr. Richman: Objection.

Q. (By Mr. Sugarman) Do you know anyone named O'Brien? A. Yes.

Q. Who is he? A. O'Brien.

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Q. What is his first name? A. I don't know his first name.

Q. Al? A. I don't think so.

Q. Did he work in the mail room? A. O'Brien?

Q. O'Brien. A. I believe so, yes.

Q. Did he use to shape for work? A. He threw his card in the shop when I was there.

Q. You saw him throw his card in? A. I never seen the cards.

Q. What did you see him do? A. All I know is that he became a sub, so I figured he threw his name in the shop.

Q. His name went up on the union bulletin board? A. On the sub list, he went.

Q. Where did you see his name on the sub list? A. A bulletin board.

Q. You called that a union bulletin board, incidentally? A. I meant to say a bulletin board.

Q. That could have been the Dow Jones' bulletin board, for all you know? A. It would have been anybody's.

Q. And Mr. McCarthy could have put that priority list

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up there showing the regulars and the substitutes, as far as you know; is that right?

Mr. Richman: Objection. There is no testimony as to who put the list up.

Mr. Sugarman: I asked what he knows about it.

Trial Examiner: He testified that he doesn't know anything about it except that it was a bulletin board.

Q. (By Mr. Sugarman) And O'Brien's name got up on that board; is that right? A. Yes.

Q. Was that after you had been working with him for some time there? A. I believe that his name, as far as I know, when he threw his card in, that is when his name goes up on the sub list.

Q. O'Brien had been working there long before you, hadn't he? A. I don't think so.

Q. When you first started shaping there, you saw O'Brien around, didn't you? A. The O'Brien I am thinking of is a young kid. He is about my age.

Q. Do you know whether he had been working in the newspaper industry before? A. Yes.

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Q. Where? A. I think I have worked with him in the Tribune. That was a long time ago.

Q. Had he been working around the industry for quite a while? A. Yes.

Q. And pretty regularly? A. Yes.

Q. What about Koenig? Do you know that fellow? A. I don't remember his name.

Q. Or a fellow named Sisk? A. I don't remember the name. I don't know if I know him.

Q. Do you know a fellow named C. W. Christ, Sr.? A. It sounds like an older man. I remember his name, but I don't remember the person.

Q. You don't remember whether this person worked ahead of you or not? A. That's right.

Q. And a fellow named Dassau? A. Dassau, the same way; I remember the name, but I don't remember the person.

Q. And Dassau used to work around there, and shape? A. I said I remember the name, but I don't remember the person.

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Q. Where do you remember the name from, the shop? A. That's right.

Q. Or do you remember it from the fact that Mr. Kull or Mr. Richman asked you about Dassau? A. They haven't asked me. I remember Dassau.

Q. If the first time Mr. Dassau worked for the Wall Street Journal was on September 26th, 1956, after you stopped shaping, you would say still that you know him from the shop? A. I have heard of the name Dassau.

Mr. Sugarman: That is all.

Trial Examiner: Any further questions?

Mr. Richman: One question.

J. Arrigale, for General Counsel, Re-direct.
Stenographic Transcript of Testimony at Hearing of November 19, 1957.

RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) Mr. Arrigale, did Mr. Mitchell ever ask you for your telephone number? A. No.

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Stenographic Transcript of Testimony at Hearing of November 19, 1957.

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Before: Louis Libbin,

Trial Examiner.

Appearances:

Harold L. Richman, Esq., 2 Park Avenue, New York, New York, appearing on behalf of the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, By: Donald J. Bain, Esq., 220 East 42nd Street, New York, New York, appearing on behalf of News Syndicate Company, Inc., and Publishers' Association of New York City.

Sidney Sugarman, Esq., 295 Madison Avenue, New York, New York, appearing on behalf of New York Mailers' Union No. 6, Respondent.

Gerhard P. Van Arkel, Esq., 1701 K Street N. W., Washington, D. C., appearing on behalf of International Typographical Union, AFL-CIO, Intervenor. (Not present on November 19.)

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PROCEEDINGS

Trial Examiner Libbin: The hearing will come to order.

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Mr. Richman: Let me state again the purpose of the offer.

The General Counsel offers this exhibit for the purpose of showing that the Wall Street Journal subscribed to and adopted, except for certain minor exceptions, all of the terms and conditions of General Counsel's 2 in evidence.

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Trial Examiner: I will receive the document as General Counsel's Exhibit 14.

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MILO EVERY, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) • • •

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Q. Are you employed by the Wall Street Journal? A. Right.

Q. In what position? A. Mail room foreman.

Q. About how long have you held that position? A. A little over two years, I believe.

Q. Did you first assume that position some time in the fall of 1955? A. That's right.

Q. And prior to that, what was your position? A. Assistant foreman.

Q. Are you a member of Mailers' Union No. 6? A. Yes.

Q. In good standing? A. Right.

Q. Are you familiar with the constitution and by-laws of the I. T. U.? A. Yes.

Q. Are you familiar with the general laws of the I. T. U.? A. Yes.

Q. Do you attempt to follow them? A. Yes.

Q. Are you familiar with the constitution of the local? A. Yes.

Q. The by-laws of the local?

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A. Yes.

Q. Do you attempt to live up to them? A. That's right.

Q. Could you briefly tell us what your duties are, sir? A. Well, I start off each night, we designate the men, the different men to the posts in the mail room.

Q. About what time does that happen? A. 6:30 or six o'clock.

Q. Is it six or at 6:30? A. Six and 6:30.

Q. What happens after you designate the men for their work? A. They go to the respective jobs which I give them.

Q. What do you do? A. I walk around the floor, supervise it, and take care of the machinery. If a machine breaks down, I fix it.

Q. Do you follow a certain order in putting the men to work in the mail room? A. That's right.

Q. Which men go first? A. Well, we have—

Mr. Sugarman: May I have a clarification? The question is, do you follow a certain order in putting men to work.

By putting men to work, are you talking of what he

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described as his duties of assigning men to particular, or designating men to particular work, or are you talking of the initial act of hiring?

Mr. Richman: I think the witness understood.

Q. (By Mr. Richman) Do you follow a particular order in hiring the men? A. Yes.

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Q. (By Mr. Richman) I show you General Counsel's Exhibit 13 for identification.

Could you tell me what that is? A. A sign-up sheet.

Q. Was this the sign-up sheet in effect in the early part of November, 1956? A. It looks like it is.

Q. Where is the sign-up sheet kept? A. Right on the board overnight.

Q. Where is this board? A. On the table in the mail room.

Q. Is there a different sheet for each night? A. Yes.

Q. Each night you put this blank sign-up sheet on the table?

741

A. That's right.

Q And does this sign-up sheet remain the same form until revised by you? A. That's right.

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Q. (By Mr. Richman) I show you this, and ask you first, what do the two sections of individuals signify?

You have a group which takes up the first two-thirds of the page. What are they? A. This first group is your steady men. They come in at night and sign up.

Q. Do they go through any particular hiring procedure? A. No. That's all the steady crew down to here. Below where it says, "Subs," that's regular subs that have their cards deposited in the shop.

Trial Examiner: Every name above the word "subs" are the steady men or regular situation holders?

The Witness: That's right.

Q. (By Mr. Richman) Now, at this time were there some

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names that should have been on this regular substitute list who are not on? A. I think there was one or two when the new list was made up that would have been added on to it, because they had their cards in there but no new sheets were made up at that time.

Trial Examiner: When you say "cards," are you referring to union cards?

The Witness: That's right.

Q. (By Mr. Richman) Do you recall their names? A. Is Sisk on there, and is Dassau on there?

Q. There is no Dassau. A. That's one.

Q. Do you recall the name Christ? A. Christ and Wilkinson.

Q. Should Christ be on this list at about the time we are talking about? A. Yes.

Q. Had he deposited his card in the shop? A. I think he did.

Q. Do you recall any others who would be on this list but— A. After that list was finished, we made the new one up and I listed Dassau, Wilkinson and Christ.

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Q. (By Mr. Richman) Mr. Every, who has this list printed up? A. I have them printed up.

Q. You give instructions to someone to print it up? A. That's right.

Q. Where do you get the information for this list? A. Well, I get the information on that list from myself and the chairman.

Q. Does the chairman give you a list? A. No. That's my steady list—myself and the chairman make that list up. All the steady men are on first, and then the subs who deposit their cards with either myself or the chairman. The first sub is the first man on that list, and the next man goes under it.

Q. Do the regular situation holders here have their cards deposited with the chapel chairman? A. Yes.

Q. As far as you know, all the men have their cards deposited with the chapel chairman? A. Yes.

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Q. (By Mr. Richman) Can a man get on this list who has

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not deposited his card with the chapel chairman? A. No.

Q. When a new man comes to the shop, a new man who has a card, and he deposits it with the chapel chairman, does he tell you about that? A. Yes.

Q. You receive information about revisions from the chapel chairman? A. That's right.

Q. Is it a fact that this list corresponds to the priority list maintained by the chapel chairman? A. That's right.

Q. Are the men on this sign-up list, General Counsel's 13, in the same order that they appear on the priority list maintained by the chapel chairman? A. Yes.

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Q. If you didn't have enough men among the regular situation holders and regular substitutes, where would you get the difference? A. Whoever would be shaping the floor, I would put them on.

Q. Who shapes the floor? A. Substitutes, outside men.

Q. When you talk of outside men, are they outside card men?

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A. That's right.

Q. Are these men who hold cards in the union who work in other shops? A. That's right.

Q. Do they come to the mail room of the Wall Street Journal looking for work? A. That's right.

Q. Are they usually a group of men there looking for work? A. That's right.

Q. When are they put to work? A. At 6:30.

Q. After who? A. After all your regular subs are hired.

Q. Are there any people without cards who have shaped? A. At different times we had several people without cards.

Q. Are these people without cards put to work? A. After the regular men who have been shaping there for years.

Q. Well, I am asking you first only: Are these men without cards ever put to work; either yes or no? A. They are.

Q. Do these men without cards go to work after these outside card men are put to work?

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A. That's right.

Trial Examiner: So the order is first the substitutes, then the outside card men, and then the non-union men who happen to be shaping?

The Witness: That's right.

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Q. Was Mr. Mitchell the chapel chairman in 1956? A. I think he was.

Q. Did he ever hire some of the regular subs? A. Not hire them; he can take them from the sheet and he will elevate them up there.

Q. Did he ever put regular subs to work? A. On the sign-up sheet, yes. You can do that. You move your subs up to the steady jobs.

Trial Examiner: He writes their name?

The Witness: No; they sign their names. It is the idea of taking it from the sub line. But the hiring and firing is up to the foreman.

Trial Examiner: What do you mean when you say he can take the substitute and put them in place of the steady man who is absent?

The Witness: He tells the fellow, "Sign up here."

If a steady man is not here, he scratches that name out and tells the first sub to move up. That leaves about nine subs left.

Trial Examiner: You say that the chapel chairman can do that?

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The Witness: Yes. The men themselves can do that.

Q. (By Mr. Richman) Were there times in about the fall of 1956 or the summer of 1956 that you didn't have enough regular subs to cover the shop? A. I think so; it might have happened.

Q. Did Mr. Mitchell put any of the outside card people to work? A. No. If you are talking about the sign-up sheet, that is not hiring; that is moving the subs up to steady positions.

Q. I'm talking about a case where you didn't have regular subs.

Then you would go to the outside card men shaping; is that right? A. That's right.

Q. Were there times during the summer or fall of 1956 when Mr. Mitchell would put some of these outside card men to work? A. He would have to consult me first.

Q. Were there times when you weren't around to be consulted? A. He couldn't sign them up unless I okayed it.

Q. When did you okay it? A. The deadline, 6:30, I would have to be there.

Q. Would Mr. Mitchell put them to work subject to your

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okay? A. No; only on the sign-up sheet. He can elevate the subs, that's all.

Q. Would he elevate outside card men the same way? A. *No.*

Q. Let's talk about outside card men.

Were there times when you weren't around at six or 6:30 to take the shape-up? A. No.

Q. Never? A. I had to be there.

Q. Were you there? A. I've got to be there. I'm the guy that gives the all up.

Trial Examiner: What does that mean?

The Witness: We have a sufficient amount of men for the job when we say "all up."

Q. (By Mr. Richman) When you say "all up," those who are not hired go home? A. That is correct.

Q. Coming back to the outside card men, as between outside card men from different shops, is there an order among these outside card men for hiring? A. Well, I usually hire the fellow who shapes there the most, yes. The man oldest there and shapes the most, he gets

the first consideration.

Q. Is there any difference between outside card men who are substitutes from other shops who have less than five days there, and outside card men who hold steady positions in other shops? A. I don't know about that. We got a lot of outside men who have plenty—some of them put five days in there.

Q. My question to you was this:

Is there any difference in their order of hiring between a substitute from another shop who has less than five days there, and steady men from other shops who have a full week's work? A. Oh, yes. If a substitute hasn't got his time in, he would go ahead of a man who has five days.

Q. How would you know? A. They ask the man on the floor.

Q. Does Mr. Mitchell ask the man? A. Sometimes, and sometimes I do.

Q. Does Mr. Mitchell tell you when he asks the men on the floor? A. Yes.

Q. He tells you which man hasn't got the five days in the other shop? A. That's right.

Q. Does that man get preference over a steady man from

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another shop? A. He does.

Q. Mr. Every, as between a substitute from another shop who has less than five days, and a steady man from another shop who has a full week's work, does the substitute get preference in hiring at the Wall Street Journal? A. That's right.

Q. Will he be the next man on after the regular subs of the Wall Street Journal? A. That is correct; right.

Q. Are there times when you don't know whether the men shaping are card holders or non-card holders? A. I make it my business; I have to find out.

Q. From whom? A. I ask the chairman if I am in doubt.

Q. Does the chairman always have the answers for you? A. He knows most of the subs all around town.

Q. And based upon this information that you received from the chairman, does that govern the order in which you hire these outside card men? A. Yes.

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Q. (By Mr. Richman) During the summer and fall

of 1956, was Arrigale the oldest of the non-union shapers? A. I believe so.

Trial Examiner: Oldest in priority?

The Witness: Yes.

Q. (By Mr. Richman) Would he be put to work when there were no more outside card men shaping? A. That is correct.

Q. He would be the first to be put to work? A. That is correct.

Q. Now, when does the vacation period of the mail room usually run? A. Well, that varies. Some fellows take it as early as January or February.

Q. Let's take the majority of them. A. July, August and September, June.

Q. During that period of July, August and September, are there many nights when not enough regular situation holders show up or regular substitutes show up to cover the shop? A. That happened occasionally.

Q. Did you give any instructions to Mr. Mitchell with respect to that situation? A. I had asked Eddie to have enough subs available in

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case we needed them.

Q. By "subs," do you mean outside card holders? A. Outside help, that's right.

Q. Do you know what Mr. Mitchell did to have these men available? A. He called them up and had them shape.

Q. Where did he call them up at? A. I don't know whether he called them from his house.

Q. Where did he call the men? A. From different newspapers in the city, different shops in the city.

Q. Was Mr. Arrigale shaping all during this time? A. He shaped on and off.

Q. What do you mean by on and off? A. He wasn't consistent, not every night in the week.

Q. Did he shape most of the nights of every week? A. Yes.

Q. He shaped at least three nights every week? A. I guess so.

Q. While he was shaping, were these outside men being called by Mr. Mitchell during this vacation period? A. We have a majority that shape down there themselves.

Q. Listen to my question.

While Mr. Arrigale was shaping, was Mr. Mitchell doing this telephoning to get in the outside card men?

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A. He would have sufficient help there to cover the jobs.

Q. Was he doing it by telephone? A. Yes.

Q. Now, when these men came in to work, were any of them put to work on jogging, these outside card men I am talking about? A. You would have to give them—outside card men, you would have to give them work that they didn't know.

Q. That they didn't know? A. Wait a minute.

You would have to give them work that they weren't experienced with.

Q. Why? A. Are you talking about Arrigale?

Q. No. I am talking about when these outside card men received work at the Wall Street Journal, did some of them do jogging work? A. Yes; jogging and escalator and everything; whatever I needed them on.

Q. Did some of them work on the conveyor, too? A. That's right.

Q. Some of them did escalator work? A. Single wrap, bundling, or whatever I needed them for.

Q. Isn't it a fact that the men on the mailing machines

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are the regular situation holders of the Wall Street Journal? A. That's right.

Q. And isn't it also a fact that when these outside card holders are put to work at the Wall Street Journal, seldom does any one of them go on a mailing machine? A. That's right.

Q. Isn't it also a fact that these outside card holders usually do this work on the conveyor, on the escalator, and jogging? A. All around, wherever I need them: escalator, jogging, tieing up bundles, carrying.

Q. Isn't most of their work on the escalator and conveyor and jogging? A. It all depends. Sometimes I have to take them off and tie up bundles in between.

Q. Do you recall the work Arrigale did in the mail room? A. There was one type of work I could give him. He didn't have any experience, so I had to put him on the carry.

Q. Did he work on the escalator? A. Yes; but it was a sloppy job.

Q. Did you ever tell him that? A. We had to put up with it; it was an emergency.

Q. When he worked on the escalator, was there a switch every fifteen minutes?

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A. That's right.

Q. So that Mr. Arrigale got to do jogging work? A. That's right.

Q. By virtue of another switch, Mr. Arrigale did the conveyor work? A. Conveyor and jogging, that's right.

Q. You never told Mr. Arrigale that you were dissatisfied in any way with the work he was doing? A. No; but I did encourage him to do better.

Q. Was that because he was a new man at this? A. Well, after he worked there a while—he started off good. After a while he petered out.

Q. He fell to pieces? A. No; but when he started, he was aggressive, he dug in. But after he was there a while, I don't know, he seemed to stall the night through.

Q. You never told him that he was unsatisfactory? A. I didn't say he was unsatisfactory, but I kept after him to do a better job on it.

Q. Did you ever keep after other people to do better jobs? A. Not with steady men or anybody else.

Q. What about outside card men? A. I have to keep after them.

Q. Was that because many of them were unfamiliar with

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the routine of the Wall Street Journal? A. That's right.

Q. Isn't it a fact that when Mr. Mitchell was calling these outside card men to come to the Wall Street Journal to shape, you had given Mr. Mitchell prior approval to put them on to work? A. He cannot sign them up unless I okay it.

Q. Did you tell him that you would okay any men he called in? A. I told him to secure the men, and if I needed them I would put them on; "have them shape."

Q. Weren't all of those men called into the shop by Mr. Mitchell assured of a night's work? A. No.

Q. Did any of them walk when he called them on the telephone? A. He asked them to shape.

Q. Did any of them walk? A. I guess they did at different times.

Q. Are you sure? A. I can't prove it.

Q. I'm just asking you what your recollection is. A. I'm not sure.

Q. With respect to Mr. Arrigale's performance, let me see if I can refresh your recollection.

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Would you read this, please (handing document to the witness)? A. Yes.

Q. Would you say, as to jobs you assigned him that he performed satisfactorily? A. I recall signing that there thing—

Q. That's not the question, Mr. Every.

As to the jobs you gave him—, A. Satisfactory, I would say, for carrying only.

Q. Carrying includes what? A. Carrying the newspapers.

Q. From where to where? A. From the escalator over to the machines.

Q. Did you also, during that period, assign Mr. Arrigale to jogging? A. That's right.

Q. Was his work satisfactory on the jogging? A. It was definitely not satisfactory.

Q. But you never told him? A. I kept prodding him on it, because various operators come to me and I had to slow down the machines to the extent that I was losing production. This machines go ninety-six hundred an hour.

Q. Does the job that Mr. Arrigale did turn up every night? In other words, did someone do that particular work

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every night? A. That particular job covers all different

phases: jogging, carrying, escalator work and tieing up bundles.

Q. Do outside card men get assigned to that work? A. As a rule, I can't give them—only certain types of work.

Q. Which work do you give to outside card men? A. Mostly carrying. I give them a chance on the escalator and on the jogging up.

Q. Did Mr. Arrigale do certain things that outside card men were not assighed to? A. Let me have that again.

Q. Did Mr. Arrigale do certain little jobs that outside ca. . men were not given? A. No, he couldn't; he didn't have enough experience.

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Q. • • • When did Mr. Christ put in his card to get priority? A. August 6th, 1956.

Q. About August 6th, 1956, did Mr. Christ shape at all? A. As a rule, most of the subs shape before they deposit their cards.

Q. Why?

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A. To look the work over and see if they like it. Then they give the card to the chairman or myself.

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Q. Wasn't it a fact that Mr. Christ shaped in 1956 only about a month before he put in his card?

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A. You can say two months.

Q. When do you recall Mr. Dassau putting in his card and getting priority? A. It is September 25th, 1956, here.

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Q. He didn't shape during the one or two years before he put in his card in 1956? A. That's right.

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Q. (By Mr. Richman) I show you this, General Counsel's Exhibit 16 for identification.

Is that the sign-up list you used for September 18th, 1956? A. That's right.

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Q. This fellow, A. X. Buckman, is a regular situation holder? A. That's right.

Q. He wasn't there that night? A. That's right.

Q. Did Sisk sign in in his spot? A. Yes.

Q. This fellow Wallstein is a regular situation holder? A. That's right.

Q. And he wasn't there? A. That's right.

Q. This fellow Arthur O'Brien signed in his spot? A. Yes.

Q. And the same happened with the regular situation

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holder Heifenstein? O'hrist signed in his spot? A. That's right.

Q. What about Fitzgerald? Is he an outside card man? A. That's right.

Q. So he was the only one on that complement that worked on September 18th, the only outside card man; is that correct? A. That's right.

Q. And this sign-up constitutes the group of individuals working the mail room that night? A. That's right.

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Trial Examiner: I will overrule the objection and receive General Counsel's Exhibit 16.

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Q. (By Mr. Richman) I show you General Counsel's Exhibit 17 for identification, and ask you whether that is the sign-up list used on September 19th, 1956. A. That looks like it.

Q. Is it a fact, after looking through the list, that R. Gifford, and C. Calafato are the outside card men on this list? A. Gifford is an outside card man; Calafato is an outside card man.

Q. Those are the only two? A. Yes.

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Mr. Richman: I offer General Counsel's No. 17 in evidence.

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Trial Examiner: I will overrule the objection and receive it.

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Q. (By Mr. Richman) Going back to Mr. Mitchell's calling these outside card men from other shops, isn't it a fact that you told Mr. Mitchell that anyone he called was okay with you so long as he covered the shop with competent men? A. They were not hired, they were called to shape, and if we think we are going to be short, he calls several shops and has enough men on hand to cover the situation.

Q. Did you tell Mr. Mitchell anyone he called was okay with you? A. It was all right, as long as they were competent men, yes.

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CROSS EXAMINATION:

Q. (By Mr. Sugarman) • • •

Q. How far is Smithtown, Long Island, from your paper's office? A. About fifty-five miles.

Q. How did you travel from work?

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A. By car.

Q. And to work? A. By car.

Q. About how long a trip is that? A. I would say one hour and-a-half with favorable riding conditions; sometimes it is two hours. Today it was two and-a-half hours.

Q. What time do you generally get in to the paper from home? A. 5:30 or a quarter of six.

Q. Is the size of the newspaper for that evening's run definitely known before your arrival? A. Yes.

Q. Therefore the number of men to be required for that night's production is known? A. Yes.

Q. Do you know what time Mr. Mitchell generally gets to work? A. He's there very early. As a rule, he is there around 5:30 and sometimes five o'clock.

Q. Generally before you arrive? A. Quite frequently, yes. They sit around and play cards.

Q. You mean he's already signed in and is on the payroll?

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A. The steady men know that all they have to do is put it on the sheet, so when I make the payroll I have to sign in everybody.

Q. Do you maintain on your person, for the performance of your duties as a foreman, a list, a booklet of names

and addresses of available men around town whom you might draw upon? A. Yes, we have a sub list.

Q. Do you maintain a little booklet of telephone numbers and addresses, or anything of the kind, yourself? A. Yes.

Q. If you had advance information at home that you might need a half-dozen for that evening, would you start to make calls for them to round them up from home? A. I would, yes.

Mr. Richman: Could we have a time on that?

Mr. Sugarman: I am asking of the general practice.

Q. (By Mr. Sugarman) Do you sometimes do that? A. As a rule, we have enough subs shaping that place. Occasionally we have to call from the book.

Q. Do you call up any in the immediate telephone—what do you call it—region, or area of Smithtown? A. No. I have to call up a man local. I have to get them in there fast.

Q. You call them from in and around New York City?

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A. That's right.

Q. How expensive is a toll call from Smithtown to New York? A. I think it's about fifty cents.

Q. If you had to call a half-dozen men, you would run up three dollars plus tax on the tolls? A. From Smithtown I don't make any calls, because I get in early enough that I can make them from New York.

Q. You were asked by Mr. Richman whether you were familiar with the I. T. U. laws, the general laws, the constitution and by-laws of the local union, and I think your answer was that you were familiar with that? A. That's right.

Q. You were asked whether you attempted to live up to those laws and constitutional requirements.

You said you do attempt to live up to them? A. That's right.

Q. Do you have any awareness of the particular duties of the foreman, as written out in the laws and in the constitution and by-laws in the various articles and sections? A. Well, he is to supply competent men for the different jobs; and I must point out that this particular job at the Wall Street Journal is not an ordinary job. We have Speedomatic mail machines where you have to have competent men.

Q. In that respect, is the Wall Street Journal mail room

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substantially different from the mail room of other publishers in New York? A. I would say definitely yes; it is a mechanical mail room.

Q. Do you have a smaller quota of unskilled workers, if I may call them that— A. Yes.

Q. —at the Wall Street Journal than you would normally find in the other papers around town? A. Well, you can't say unskilled. You could only use a man on certain jobs if he hasn't any skill.

Q. But assuming a certain degree of skill in every physical activity, is the minimum simple skill required in certain jobs at the Wall Street Journal in a much smaller quota than you would find those same jobs in other newspapers around town? A. Oh, yes.

Q. Getting back to the laws and constitution for a moment, have you ever been made aware of the possible impact of the Taft-Hartley Law upon the duties and obligations of a foreman and a member of the union as speci-

fically set forth in the laws and constitution? A. I'm not —I don't know all of the law, but I always try—I don't discriminate against anybody.

Trial Examiner: Have you ever been made aware?

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Q. (By Mr. Sugarman) That there is some impact of the Taft-Hartley Law upon these duties and obligations? A. Yes.

Q. You began to describe something of what you understand to be the limitations upon your duties and obligations; you said one was not to discriminate? A. That's right, regardless of whatever race, creed or color.

Q. What about concerning the man's membership status or lack of status in a union?

Is that ever a governing factor as a basis of discrimination that is permitted or prohibited as you understand? A. I don't discriminate against anybody. I just go along and I hire them by their priority, just the way they come. The oldest man there I would put on first.

Q. How long had you been assistant foreman before you were designated foreman? A. Eight years.

Q. Who picked you for the foremanship? A. The previous foreman.

Q. What was his name? A. Mr. Kenneweg.

Q. He's not at the paper any longer? A. No.

Q. Was your name submitted to the management by him?

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A. I imagine so.

Q. You were one day informed that you were it, you were now the foreman? A. That's right.

Q. Did you have any specific instructions from any-

body on the top side of management as to what the limitations were upon your duties of a foreman? A. No.

Q. Or describing to you what your duties were going to be as a foreman, other than that which you knew them to be from the union point of view? A. No. I have handled the job on different occasions when Mr. Kenneweg was out of town, and I evidently knew what I was doing, so I had never to be told what to do. Down at the Wall Street Journal, they leave it up to each department head to more or less run it as he sees fit. They have enough confidence in each department head.

Q. You said before, when I asked you about the extent of your knowledge of the impact of the Taft-Hartley law upon the performance of your duties as a foreman, that you knew you weren't supposed to discriminate.

Was there anything else that you came to know about the Taft-Hartley law which had an effect on your foremanship? A. No, I can't say.

Q. The prime thing was that you were not to discriminate

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against or in favor of a union man? A. To race, creed, or color, or anything else. If the man was there shaping, the oldest man I would put on first. That was the system for a long time.

Q. Suppose a man had not shaped around for a long time, but showed up for the first time as against another man who had been shaping for a considerable time. Would there ever be an occasion when you would hire the new man first? A. No.

Q. Not for any purpose of the shape that evening? A. No.

Q. Didn't you testify on your direct examination that

in the case of a man named Fitzgerald, who I believe shaped for the first time, you did some time in 1956 hire him before you hired others? A. That could be.

Q. Well, then, does your answer stand that you would not ever hire a man who was shaping for the first time no matter what the consideration? A. If I needed the man and he was on the floor shaping, regardless of whether he had a card or not, I would put him to work.

Q. I'm not talking about whether he had a card or not. I ask in general whether there were any circumstances which might dictate your hiring such a brand new man on occasion as

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against a man who had shaped around for some time. A. No, I wouldn't put the brand new man on. I would put the man who shaped around on first.

Q. Would that be regardless of the work for which you were going to hire a man— A. That would be—

Q. Let me finish.

—regardless of the work for which you were going to hire the man, and the qualifications of the one man as against the other to perform that work? A. Naturally, I have to take that into consideration. The man who has been around the shop and had shaped around, he knows the work. Naturally, I am going to put him on first because I have to have experienced help.

Q. So, your rule wouldn't be without exception that you would hire the man that would shape the longest; you would assume that he would have to be a man qualified and perhaps better qualified for the job than the other man?

Mr. Richman: Objection.

A. He would naturally be, yes, sir.

Trial Examiner: Let the answer stand.

Q. (By Mr. Sugarman) If he were not, you wouldn't hire him; you would give the man who had been shaping the break? A. That's right.

Q. But there is no special magic in the single fact that

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he may have shaped earlier than another man; that is, in itself, without regard to qualifications?

That isn't enough to entitle him to a job; is that right? A. Oh, no.

Q. Do you remember, in general, without my now reading you articles and sections, provisions of laws and the constitution of the union requiring a member of the union and a foreman to give a break to union members before giving a break to non-union members?

Do you remember there was some such provision in your constitution and laws? A. Yes, I recall something.

Q. When you say you attempt to live up to the constitution and laws, do you attempt to live up to that obligation too? A. Yes.

Q. To the fullest extent, and irrespective of the law of the land? A. Well, I try to be fair in all my decisions.

Q. I'm not talking about fairness.

You are familiar with the priority system provided for by the constitution of the union, the local union, and by the general laws of the I. T. U.? A. I believe so.

Q. Are you familiar with the stated duty of a chapel

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chairman not to permit any but union members to be employed in a shop? A. I believe so.

Q. Has any chapel chairman sought to enforce that latter provision in laying the matter before you, complain-

ing that non-union members were being hired while there were union members around to be hired? A. No; that has never come up.

Q. Wherever there is or may be a conflict between the Taft-Hartley Law, or any other law of the land, and the requirements of the constitution and general laws, which do you understand are to prevail in your carrying out your duties as foreman? A. Well, the Taft-Hartley Law is probably recognized as the main thing. But there is nothing in our books contrary to that that I know about.

Q. Is there any question in your mind but that the Taft-Hartley Law would have to prevail over any contrary provision of your constitution and by-laws if there were such contrary provisions? A. Well, I guess if it was a law it would supersede our law books, wouldn't it?

Q. Is there any question about that in your mind? A. No.

Q. What is it, exactly, that the priority list which you

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have posted on the company's bulletin board, and which the chapel chairman has posted in the union's bulletin board, designed to show? A. The standing of the priority.

Q. You said that none but union members are on that priority list; is that correct? A. That is correct.

Q. And non-members would never be on that list so long as they were non-members? A. That's right.

Q. This does not purport to list any but union members? A. That's right.

Q. Does it purport to be the exclusive hiring list of all persons that may be hired? A. On the list, yes.

Q. Well, does it cover all people who may possibly be hired any night? A. Yes.

Q. Are there none others that may be hired that night but those whose names appear on the list? A. If I need them and they are on the floor, I put them on.

Q. Even though the names are not on the list? A. That's right.

Q. You said something on your direct examination about a

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man shaping a long time and having a priority, as Julius Arrigale had.

What kind of a priority did Julius Arrigale have; a priority of what kind, and as against whom? A. Well, he would be your first non-card man. In the event I need someone above my force and he was on the floor, I would put him on. He would be considered the first man.

Q. Do you know of anything in the collective bargaining agreement which requires you to maintain a priority system or listing of what you call non-card men? A. No.

Q. Did you institute a priority system all on your own covering non-card men only, or was this something the management told you to do? A. The management doesn't tell me what to do. I do it on my own. If I need the oldest man, I would put him on.

Q. Did anybody in the union ever tell you to maintain such a priority list for non-card men? A. No.

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Q. When a new man comes around, and if he should happen to be a member of the union, before depositing his card—if he does so ultimately—and he shapes some work and gets work,

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do you observe his work? A. Yes.

Q. And I think it was suggested by one of your answers to Mr. Richman's question that a new man would normally shape and work around a bit before deciding to [illegible] sit his card, to see if he likes it? A. That's right.

Q. And when he hits it off with you, and when you approve his work? A. He usually sizes the shop up and sees how he likes the men and myself.

Q. You size him up, too? A. That's right. You can spot a man as soon as he is in the shop, as soon as he starts working.

Q. What about J. Sisk? Was he an experienced man? A. Yes. He had experience from the Daily News, I think, before he came to our shop. He is a qualified man, experienced in handling single wrap, tying up bundles, bagging and mail distribution.

Q. You testified that you wouldn't hire situation holders, they were hired; they just came and signed in? A. That's right.

Q. In a sense, you really wouldn't hire regular substitutes; they belonged? A. They would automatically elevate themselves into the

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openings.

Q. If there were openings because of absent regular situation holders, or if they were all in attendance—that is, all the regulars were in attendance—if there were vacancies because of the size of the paper, they would sign in, knowing that so many men were needed? A. That's right.

Q. When it came to what you call outside card men, or what Mr. Richman called outside card men and you went along with it, you were talking of men, I presume, who were members of the union but who did not have

their cards deposited at the Wall Street Journal? A. That's right.

Q. And that group of outside card men broke down into two categories: one were those who had not managed to catch at least five shifts of work at the paper during the week—at the paper where they had their cards deposited—and the other category was those outside card men who had caught five shifts at their regular paper and were now just seeking to catch an extra shift's work for the week? A. That's right.

Q. And you generally gave preference to the former category, those who had not caught the five for the week as yet? A. That's right.

Q. And all of these men were normally hired, if they were

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around, in preference to what was called the non-card men? A. That's right.

Q. What was the magic of the card, the holding of the card or the failure to hold a card? A. Well, when I knew the man had a card, I knew he was a competent mailer and experienced, and I could put him on any kind of job I needed: stamping machine, tieing, bundling, bagging, and anything else.

Q. What makes you say you knew he was competent just because he had a card?

Have you ever heard of any incompetent card men? A. I don't think we have them, because we have an apprenticeship system that is good.

Q. The card contemplates the possible—as a matter of fact, it provides for the foreman's right to discharge a man for incompetency?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection as to quoting the contract.

Q. (By Mr. Sugarman) Are you familiar with the provisions of the collective bargaining agreement providing your powers to hire and fire? A. Yes, I think I am.

Q. What are the bases on which it is specified you may fire a man—

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Mr. Richman: Objection. It is in the contract.

Q. (By Mr. Sugarman) —other than in the decrease of force?

Trial Examiner: I will let him answer.

A. He could be fired for disobeying office rules or neglect of duty.

Q. What about incompetency? Can you discipline him or fire him for incompetency? A. I have yet to do that. If a man was incompetent, you could discipline the guy and try to snap him out of it.

Trial Examiner: That has never happened?

The Witness: No.

Q. (By Mr. Sugarman) Suppose a man was downright no good, even if he once was an expert at his work—he has somehow lost his skill, even as you say Julius Arrigale got sloppy—but a regular card man, with twenty years of experience, suddenly didn't know what it was about and you couldn't straighten him out for a whole month of trying.

Do you mean to say you are stuck with that man? A. You wouldn't be stuck with him—

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) So that so far as your experience at the Wall Street Journal, at least, is concerned, you haven't run into this problem of outright incompetency; is that right?

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A. No.

Q. You have found some people to be better than others? A. You will find that in all phases, yes.

Q. And you have been working at the Wall Street Journal since about 1931, I believe? A. That's right.

Q. Had you worked at any other newspapers before? A. I worked in the New York Times, New York Journal-American, New York Sun, the Journal of Commerce, the Law Journal, Fairchild Publications, and various others throughout the city.

Q. When you first deposited your card at the Wall Street Journal, was it as a regular sub? A. I walked right into a steady job down at the Wall Street Journal on account of the experience I had with mailing machines when they organized the job.

Q. All this experience you refer to at other papers was had prior to your joining up with the Wall Street Journal? A. All the experience I got with the other papers was after I was—

Q. After you got a steady job at the Wall Street Journal? A. When they organized the shop, I was a steady man, but during the depression they let a crew out, and in that crew I had to go throughout the job in different places in the city shaping up five days a week.

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I think at that time I was getting two days on the Wall Street Journal, and I shaped some time with the

Tribune or the Mirror and hooked on to get five days a week, shaping at various shops.

Q. When a card man so-called comes around to shape for work, and you haven't seen him around there before, if neither you nor Ed Mitchell, the chapel chairman, know him, does he nevertheless identify himself as a card man? A. Yes. He comes in and tell the chairman or myself that he is the card man and is shaping for work.

Q. And you generally ask him where he has been working, and what kind of work he has been doing? A. Well, it's not necessary to ask him where he comes from. As long as he is a card man I know he is qualified, because he had to pass a test.

Q. You know these men are tested? A. Yes. Every man is tested, before they get their card, either at the Post or Times or Tribune; I don't know which one now.

Q. You said that the regular subs are moved up and signed in where there are vacancies for the night. Do you recall that? A. That's right.

Q. Before anybody else is? A. That's right.

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Q. And you were asked whether the chapel chairman moves them up. Do you recall that? A. That's right.

Q. Do you recall your answer to that question? A. Either one of us could.

Q. Does it happen that the men themselves just sign in without asking anybody? A. That is correct, on the sub list.

Q. Do you recall that you so testified on your direct; you said even the men themselves? A. Yes, that's right.

Q. And they pretty much have a job there just as the regular situation holders, except that there has to be work for them? A. Up to the amount of pages.

Q. You don't really hire the regular subs? A. No. I have my men right there, twenty-nine men. All they do is sign that sheet. From that sheet, I make up the payroll.

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Q. When a non-card man, an outside, casual extra, walks in and shapes and manages to get work for the night, does he not receive, in addition to his night's pay per contract, does he not also receive fifty cents for the night? A. All extra men up and above your regular force get fifty cents a night extra.

Q. When you say over and above your regular force, you mean over the number twenty-nine? A. That's right.

Q. So that if your regular subs are drawn upon to the number of four, let's say, to fill four vacancies, because of absence on the part of regular situation holders, those four who move up don't get fifty cents for that night? A. That's right, they don't get the fifty cents.

Q. What about the other regular subs who are below them but who are needed because of the size of the paper? Do they get the fifty cents? A. Yes, they get the fifty cents. Subs would get that fifty cents who work—

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Q. Unless they are covering for an absent regular situation holder; is that right? A. That's right.

Trial Examiner: Would a non-union man also get it?

The Witness: Yes, he would get it also, regardless. That's in the contract. When the sub works on extra days—let's see now. If the sub works four days as an extra man in the week, he would not get it; but if he worked three days, he would get it. I think that's the way it goes.

Q. (By Mr. Sugarman) Well, the contract provides for the man who is entitled to the fifty cents? A. That's right.

Q. You said repeatedly in your direct testimony, in response to questions, that Ed Mitchell, the chapel chairman, did not do any of the hiring? A. Not the direct hiring, no.

Q. What other kind of hiring is there? A. Well, the hiring on the sheet, of elevating your subs covering your steady men, and the amount of pages. In fact, the subs themselves know if they are going to go to work that night as soon as they walk in, by the amount of pages.

Q. They don't even have to look at this priority list on the bulletin board, do they? A. In fact, the sign-up sheet is practically the same.

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Q. Doesn't each regular sub know what his position is without going to the bulletin board? A. They know where to go.

Q. And he looks around and sees, if he is number two man, and if the number one man isn't around, he goes up? A. That's right. The next sub would go into the next job open.

Q. You say Eddie Mitchell never does any of the direct hiring.

By that, you mean the hiring of outside card men and non-card men? A. That's right.

Q. Has Eddie Mitchell, as chapel chairman, ever, to your knowledge, made anybody walk— A. No.

Q. —anybody walk for lack of work? A. Wait a minute. Men would walk with myself or anybody if there is not enough pages there, or it is a small paper.

Q. Did Eddie Mitchell, as chapel chairman, make any-

body walk? A. If there is not enough work, we couldn't put anybody on, outside of your regular crew.

Q. When is a man or men made to walk? Is it not when the all-up is declared? A. I see what you mean. When I give the all-up, that

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mean they all walk.

Q. Until then, nobody walks? A. That's right.

Q. Has Eddie Mitchell ever given the all-up? A. Not to my knowledge, because he has to consult me if I have enough. He has to come over to me and say, "Do you have enough?" I say, "All up," and he transfers it, saying "All up." It is the same thing.

Q. You say that Julius Arrigale was the oldest of the non-card men shapers; is that right? A. I believe so. He was there ahead of my brother-in-law.

Q. You say that he shaped irregularly? A. Irregularly, yes, sir.

Q. And I believe you said maybe two or three, maybe sometimes four times a week? A. That's right.

Q. Would there be weeks when he didn't show up at all? A. Occasionally.

Q. Would he ever call in to find out what the size of the paper would be? A. No. He was either there or he wasn't.

Q. Incidentally, does Eddie Mitchell, as chapel chairman, have a telephone assigned to him?

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A. No.

Q. The foreman's office has a phone? A. That is correct.

Q. That's yours? A. That's right.

Q. He doesn't sit in your chair; he doesn't take over or answer your phone? A. Anybody can answer the phone: mailers or drivers or anybody else in there. The mail room foreman and the driver foreman share one office, and if we are not around anybody can pick the phone up.

Q. During the summer of 1956 when there were a number of shortages in manpower because of vacation scheduling, you had rather more frequent occasions to tell Eddie Mitchell to call in people to cover the jobs; is that right? A. That's right.

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Q. Did you tell him whom to call? A. No. As long as they were card men, I knew they were experienced.

Q. Did you ever tell him to call only card men? A. No.

Q. Did you ever tell him to be sure to call some non-card men? A. No.

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Q. Julius Arrigale, you say, never worked at anything except the conveyor, the escalator, carrying and jogging of papers; is that right? A. That's all.

Q. Is your conveyor something different from your escalator? A. That's the same.

Q. I didn't know what your mechanical set-up was. I thought perhaps you had a kind of jamb pole arrangement. A. No. It comes out of a conveyor system out of the press room into the mail room, and then it is classified in the mail room as an escalator.

Q. The papers come packed up on a conveyor off the press

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into the mail room at the end of the escalator, where Arrigale or someone else would lift a batch of them off? A. That's right; fifty to a turn.

Q. His work there was to heft these papers and turn around and put them on a table? A. Put them on a table and stack them.

Q. When would he do the jogging? A. Every fifteen minutes; they alternate.

Q. Was there anything else that you ever saw him do, or ever assigned to him to do, in the mail room? A. You couldn't give him anything else. In fact, I covered the fellow on the job that he had. As I said, Mr. Kull asked me about him and I said, "Satisfactory." When it came to the escalator, he was not so good, and when he gave it to the operators he couldn't keep up with the speed of the machine and it slowed down production.

Q. Did you ever see him do a single wrap? A. Never.

Q. You never assigned him to such work? A. I know he didn't have the experience because his brother-in-law introduced me to him. He said if I could give him a break he would appreciate it. I said, "If he is on the floor and I need a man, I will hire him."

Q. His brother-in-law is Nutini? A. That's right.

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Q. He is a regular situation holder there? A. That is correct.

Q. How long has he been working at the paper now? A. About eight years. It's on that priority thing there.

Q. You had no reason to take it out on Nutini, his brother-in-law, particularly, did you? A. No; I don't hold no grudges. He is still working there, in fact.

Q. Nutini? A. Yes.

Q. Did I ask you about tying up?

Did you ever see Julius Arrigale tie up? A. He couldn't tie up.

Q. You never saw him do it? You never assigned him? A. I know he couldn't do it. His brother-in-law said he had no experience.

Q. What about bundling? A. He couldn't do it. I had to have the other man to cover him up.

Q. There was absolutely nothing but conveyor or escalator work, and carrying and jogging, what he ever did? A. That's all he could handle. He couldn't handle a stamping machine, tear out sheets, dispatching papers, tieing and bulk bagging and single wrap.

Q. Were there any card men ever hired from outside shops

who were assigned exclusively to escalator or conveyor work and jogging, and for nothing else? A. No. I have to shift the force around at will.

Q. What do you shift men around to? A. Well, at different times I'm behind on the single wrap. The escalator goes down, I take those fellows off the floor and designate them to hand-wrap or hand-bulk bagging for news dealers, and when it came to a fellow like Arrigale, I would have him stand around.

Q. Did you ever find a card man that didn't know how to do these things? A. Never. Any card man is qualified for all phases of the business.

Trial Examiner: Did you ever have a non-union man who could do all those things?

The Witness: No, not in my shop, because there is not enough work available. We have enough subs usually covering. But at vacation time, if we needed them, I put them on.

Q. (By Mr. Sugarman) There were other card men who you did hire from time to time, either before or after Julius Arrigale.

Were any of them capable of doing any of these other functions in the mail room? A. No, none of them were. I had my brother-in-law down

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there, another fellow—

Q. What is your brother-in-law's name? A. Phillip Perdie.

I had another fellow, I think his name is Hirschberg, or something like that—when he was on the floor shaping and I needed him, I put him on.

Q. Do you have an assistant foreman? A. Yes.

Q. Who is he? A. Frank Yuda.

Q. What work does he supervise? A. Well, he helps me in the supervision of the mail room throughout the night. He hands out wrappers, and helps along the line doing bulk bagging.

Q. Who, particularly, as between the two of you—you and Mr. Yuda—supervises the men at the escalators and at jogging? A. I do.

Q. Yuda doesn't at all? A. Only unless I am off or not there.

Q. To your knowledge, has Mr. Yuda ever assigned Julius Arrigale or any other non-card men to do any work except jogging and escalator work? A. No; he couldn't do it. He would be in the same predicament I was in.

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Q. When you assign a man to work, if he has been there before I suppose you can tell him in some short-cut way what to do.

If he has never been there, what do you tell him? A. I

have to stand around and supervise him until he gets his hand in it. About nine out of ten times, the other union men in the shop help him.

Q. When you hired Julius Arrigale, did you have to tell him what to do, or did he come to know his specific job at the escalator and jogging? A. I had to tell him what to do and encourage him to improve on it.

Q. You were not too satisfied with his work? A. No. When he started off, he started good, but then—the guy worked days and nights. Whether he was tired, I don't know, but he wasn't as good as when he first started.

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Q. Did you ever tell Eddie Mitchell, as chapel chairman, or any other chapel chairman, that in your absence at least he or they had the right to hire? A. Definitely not.

Q. Who, in your absence, does the hiring? A. Frank Yuda, my assistant.

Q. The assistant foreman? A. That's right.

Q. You referred to using Julius Arrigale and putting up with him. I think you put it, in the emergency when you couldn't get any experienced men? A. That is correct.

Q. Did you ever tell Eddie Mitchell thereafter never to call in Julius Arrigale? A. Never.

Q. Did it ever come to your attention that on occasions it was Nutini who called Julius Arrigale to come in, either because Eddie Mitchell told Nutini "Get your brother-in-law."

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or Nutini may have known about the size of the paper or he may have called Julius? A. I don't follow you.

Q. Did it ever come to your knowledge or notice that sometimes Julius Arrigale showed up because Nutini called

him to come in? A. Well, he showed up at all times when his brother-in-law used to take him to work, and various times when his brother-in-law didn't show up, Arrigale showed up.

Q. But you don't know of any occasions when Nutini may have called Julius in? A. Not that I know of. He would probably advise him if he thought it was going to be a big paper.

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Q. * * * Do you know of any incident whatever in April 1956 and in July 1956 or thereabouts, either of those months, where the Wall Street Journal discriminated against Arrigale?

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A. No, sir.

Q. And do you know at the same times of any incident by which the union caused the Wall Street Journal, or attempted to cause the Wall Street Journal, to discriminate against Julius Arrigale?

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A. Never.

Mr. Richman: Objection.

Trial Examiner: Overruled.

Q. (By Mr. Sugarman) Do you know of any arrangement, understanding or practice at the Wall Street Journal by which the paper—that is, the management of the paper—has undertaken to and does discriminate against non-union men in favor of union men, as such? A. No.

Mr. Richman: I object again.

Trial Examiner: You may have a standing objection.

Q. (By Mr. Sugarman) Do you know of any such arrangement, understanding or practice by which the paper accords preference to union men as such as against non-union men? A. That is not up to the firm; that is up to me.

Q. Well— A. I do the hiring.

Q. Are you part of the firm or part of the union, or are you neither? A. I work in the Wall Street Journal, yes.

Q. Are you or are you not, as you understand your function, a part of management? A. Yes.

Q. So far as you are concerned, and as far as anybody in management is concerned about whom you know as having a

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connection in this area, is there an arrangement, an understanding or a practice whereby the management gives preference to union men as such as against non-union men? A. Well, I would say yes.

Q. Well, now, do you give— A. I have to have experienced men; that's my reason.

Q. I don't know whether you understand the emphasis I have tried to transport into my words, which don't show on the record.

Do you know what I mean by the words "as such," giving preference to union men "as such" as against non-union men as such, just on the basis of unionism or non-unionism? A. I don't follow you on that.

Q. Assume two men equally competent in every respect, one-hundred-percent competent around your mail room, do you know of any arrangement, understanding or practice under which you give the union men preference over the non-union man? A. Yes. I would give it to the union man.

Q. Just on the basis of the fact that he is a union man? A. No; on his competency.

Trial Examiner: The question says they are both equally competent; they both have the same competency. In other words, you have two men shaping up, one union and one non-union, both of them are just as competent, and you need another man. Whom would you hire?

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The Witness: I would hire the oldest man there.

Q. (By Mr. Sugarman) Even though he happened to be the non-union man?

Trial Examiner: Would you hire the non-union man instead of the union man?

You have two men shaping up, one union and one non-union, both just as competent to do the work, and you need another man over and above your extra force and your subs.

Which of the two would you hire?

The Witness: You say they are both competent?

Mr. Sugarman: Thoroughly, equally competent.

The Witness: You say a union man and a non-union man—one has to be competent.

Trial Examiner: In your view, a non-union man can never be as competent as a union man?

We are telling you that both of them are just as competent. Accept that for a fact.

Mr. Sugarman: I would like to withdraw the question. I will come back to that.

Q. (By Mr. Sugarman) So as to make no bones about the basic facts, let's say a man had been a member of the union for twenty years, and he worked in your mail room for twenty years at everything.

Let's pick a man—I don't care who he is; somebody high up on the priority list—a regular situation holder,

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and for some reason he dropped his membership in the union, or was expelled from the union for some reason, and he continued to have his job there—well, this doesn't fit so well if he is a regular situation holder—but he shows he had all of this experience in another shop, and at the same time he left that shop but you knew him to be thoroughly experienced and he was a union man and he had passed every test, and he comes along and you have a card man there in good standing. The first fellow is no longer a card man: he had been: there is no question about his competency.

Who comes first? A. The sub would be there. I would put on the fellow who is on the floor.

Trial Examiner: You mean the card man?

The Witness: Yes.

Q. (By Mr. Sugarman) For what reason? A. Well, he has been shaping there the longest. The other man has been away from the craft so long.

Q. So once the question of competency is out of the question, then you apply this test of shaping? A. That's right.

Q. How long he has been shaping? A. That's right.

Trial Examiner: Suppose they were both shaping the same length of time? You have a union man and non-union

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man, an outside card man and a non-union card man, both shaping at the Journal for the same length of time, and both just as competent, and you needed an extra man. Who would you hire?

The Witness: The man that was there the longest.

Trial Examiner: They are both there the same amount of time.

The Witness: I don't get the point.

Q. (By Mr. Sugarman) If you needed one man? A. I would hire the union man.

Q. Why? A. Because I know the man is competent.

Trial Examiner: Is it your view that a non-union man cannot be as competent as a union man?

The Witness: If given time, he can be.

Q. (By Mr. Sugarman) We are assuming he has the time; there is no question about that any more. A. The man that was there the longest.

Trial Examiner: They are there the same length of time.

The Witness: You can flip a coin in a case like that.

Trial Examiner: You would hire a non-union man ahead of a union man?

The Witness: If he was there ahead of the other

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fellow—wait a minute—

Q. (By Mr. Sugarman) We are assuming he wasn't there ahead of him. A. I would naturally hire a union man first, yes.

Q. That would be your personal inclination, to stand with the union man? A. Yes.

Q. Is there any arrangement or understanding or practice by which you have undertaken to do so, or in fact do so? A. No. It is just my own arrangement, that I think it is the best insofar as men that I need.

Q. There is no question about it; you would rather see a union man get a break than a non-union man, all other things being equal? A. That's right.

Q. Do you understand that the law permits you to give him the break? A. No.

Q. Would you go in the teeth of the law and give him a break? A. I wouldn't obstruct the law.

Q. You understand that to be the law, and you don't practice that way? A. I don't follow you.

Q. You don't, in fact, follow that practice of just

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preferring a union man because he is a union man, all other things being equal? A. I figure everybody is equal.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) Those are the hiring procedures followed by the foreman before you; is that correct? A. That's right.

Q. Now, if one of your regular situation holders was expelled from the union for some reason, could he continue to hold that regular situation spot? A. No, he would lose it.

Q. Could you conceive of a non-union man who is competent? A. Yes, if the man is good, he knows the business.

Q. Have you ever seen any? A. Not in my particular line; there is only different phases of work I can give the man.

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Q. Did you ever tell Arrigale to stop coming around? A. Never.

Q. Therefore, if he had continued to come around instead of stopping at around the end of September, he would have been put on from time to time? A. Definitely, he would have.

Q. Now, when Mr. Mitchell was calling men in—rather, calling men from other shops, did he clear with you every day as to whether he should call these men? A. He would have to find out first how big the paper was. If he thought it was big, he would ask the fellows that shaped the shop that they might need men.

Q. In other words, he, on his own, would determine how many people were necessary? A. That's right.

Q. He didn't talk to you each day and say, "Mr. Every, should I call?" A. I told him if the paper—

Q. This was a blanket authorization you gave him? A. That's right. When that press rolls, I have to have the men there.

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Q. Did you ever object to a man depositing his card with the chapel chairman? A. Never.

Q. Do you think you have the authority to object? A. No, sir.

Q. Isn't it a fact that there are mailers who get their union card without going through an apprenticeship? A. If they qualify for it.

Q. There are some? A. There is, yes.

Trial Examiner: When a man puts his card in with the chapel chairman, what's the effect of that?

The Witness: Well, we put the date down that he left his card in the shop, and we put him on the bottom of the sub list. Then he has to work up.

Trial Examiner: Once he puts his card in with the chapel chairman, that automatically puts him on the bottom of the sub list?

The Witness: That's right.

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Q. Did you get any instructions ever, from the management of the Wall Street Journal, about how you should conduct the hiring? A. No.

Q. You consider all men with union cards competent; is that right? A. Yes, sir.

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RE-CROSS EXAMINATION:

Q. (By Mr. Sugarman) * * *

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Q. Your immediate contact with the union is with the chapel chairman? A. That is correct.

Q. When you call upon Eddie Mitchell to supply the office with competent, experienced and satisfactory men, you expect that is what he will do? A. Exactly.

Q. If you should find a man so supplied in your judgment to be incompetent, are you familiar with your rights and powers to deal with such a man under the contract and as foreman? A. Well, you will only find out when the fellow is working.

Q. If you find out he is incompetent, you realize you have the power as foreman to deal with that problem? A. That's right.

Q. Did I understand you to say to Mr. Richman that if a regular situation holder lost his membership in good standing in the union, he would thereupon lose his job? A. A. He would lose his priority.

Q. Would he lose his job?

What do you mean by "lose his priority"? A. If he lost his job, naturally he would lose his priority.

Q. If he lost his membership in the union, he would lose

his priority because that list is a list of union members only; is that right? A. Yes.

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Q. Now, has this ever happened, that a man lost his membership and therefore lost his priority? A. It never happened.

Q. Is it your understanding that even though it never happened and you were never called upon to exercise your authority, that if he lost his priority he would also lose his job and have to get out altogether just because he wasn't a member of the union? A. That never came up. It never dawned on me.

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Q. (By Mr. Richman) If a man lost his priority, he would not be hired in the same order as previously; is that correct, Mr. Every? A. Wait a minute. You say a man that loses his priority. If a man loses his priority, he is not there any more. If he quits or retires, he's gone.

Q. I asked you before about a man who lost his membership, and I believe you said he would lose his position as a regular situation holder.

Do you recall that answer? A. If he lost his membership, he would have to be expelled for neglect of duty.

Q. Suppose he were expelled. Would he lose his regular

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situation spot? A. He would, yes.

Q. Therefore, he would lose his priority? A. Naturally.

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EDWARD MITCHELL, called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Richman) • • •

Q. How long have you worked for the Journal? A. Seven years.

Q. In 1956, did you hold any position on behalf of the union in the Wall Street Journal?

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A. Yes.

Q. Were you chapel chairman? A. Yes.

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Q. What are your duties as chapel chairman, generally? A. A father confessor, I guess you could say. Mostly, the chapel chairman is there to settle disputes between management and the foreman and members of the chapel themselves.

Q. Do you take up grievances on behalf of your members with the foreman? A. Yes.

Q. Do you go above the foreman sometimes with those grievances? A. If necessary, yes.

Q. Do you maintain the priority list? A. Yes.

Q. How is that list made up? A. The mechanics of having it made up?

Q. No. How do you get the names of men on to that list? A. By the length of time the member is in the chapel.

Q. Does an individual have to do anything to get on that list? A. Yes. He has to declare himself wanting of

work in the

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chapel.

Q. Does he give you anything? A. He gives me his union card.

Q. Then you put him on the list? A. Then I put him on the list.

Q. Do you note the date on which he gives you his union card? A. Yes.

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Q. Is one of your duties as chapel chairman the job of seeing that the constitution and by-laws of your local union are observed? A. Yes.

Q. And is another of your jobs or duties as chapel chairman the job of seeing that the general laws and the constitution and the by-laws of the I. T. U. are observed? A. Yes.

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Q. I take it you have read and are familiar with your local union constitution and by-laws? A. Yes.

Q. And you try as much as you can to live up to the provisions of that local constitution and by-laws? A. Yes, as much as I can.

Q. Does that also hold true with respect to the I. T. U. constitution and by-laws and general laws? A. Yes.

Q. What do you do with those cards that the people deposit with you? A. Generally speaking, they are for dues purposes, and when I collect the dues I turn the monies and the cards over to the secretary-treasurer. He puts the dues stamp in and the amount of dues paid, and returns it to me.

Q. You hold the cards for most of the time; is that right? A. That's right.

Q. Except when they are in the hands of the secretary? A. The secretary-treasurer.

Q. When a man leaves the shop, does he get his card back? A. If he wants it, I give it to him.

Q. Now, when a new man comes to the shop and deposits his card with you, you put his name on the priority list; is that correct?

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A. That is correct.

Q. Do you then notify Mr. Every, the foreman, that so-and-so has deposited his card as of this-and-this date? A. Yes.

Q. And Mr. Every then includes him on the sign-up sheet; is that correct? A. Well, yes.

Q. The sign-up sheet sometimes is a little behind the priority list? A. Or vice versa, yes.

Q. Is the priority list ever behind the sign-up slip? A. Yes.

Q. In what cases would that happen? A. He may have his list made up before I have mine made up, his new, revised list.

Q. Do you have your priority list printed in the shop? A. Well, generally, one of the fellows in the shop is friendly with one of the printers upstairs, and as a favor they print it up.

Q. In other words, a printed list appears on the bulletin board; it is not a handwritten list? A. That's right.

Q. Now, is there anyone on the priority list who has not deposited a card with you? A. No.

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Q. Can a man get on the priority list without depositing a card with you? A. No.

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Q. During the vacation period of 1956, did you receive any instructions from Mr. Every with respect to calling men from work? A. Not instructions; I was asked.

Q. What were you asked? A. It seems at that time our circulation was higher than it is now, constituting more work, and the size of the paper was running generally big, requiring more help. Six and seven men at a time was on vacation, leaving the shop short on a certain number of pages, and in a conversation between the foreman and I, we agreed that during the day I would call up and if the size of the paper warranted more men than were then going to be available, I would call around; I would call Fairchild Publication, or the Telegram, and I would tell Phil Loughran and Dick Gifford of the Telegram that we were

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going to be short, and see if they could get so-and-so to come down.

Q. Before you started calling these individuals, did you speak to any official of the union about this matter? A. Yes. I believe I consulted the officials and asked them if it would be within the law for me to do such a thing.

Q. What law? The union law? A. That's right.

Trial Examiner: What officials did you consult?

The Witness: I think it was Frank O'Hara. At the time, he was the business representative.

Q. (By Mr. Richman) Mr. O'Hara said that it would be okay for you to do that? A. Yes. It was just a question

of leaving the shop short and have to work for an hour or thereabouts short four or five men, which we couldn't do without losing mail, and subsequently subscriptions.

Q. If you didn't call men by telephone, would you have had to rely on people shaping the shop for work? A. Yes. That would be the only way he could get the men, would be to take those that shape.

Q. Do you believe that there wouldn't be enough people shaping? A. I was positive; that's why I made the phone calls.

Q. About what time of day did you make these phone calls?

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A. Well, the publisher themselves would not know the size of the paper until two o'clock or three o'clock in the afternoon, so I would call around two o'clock or three o'clock.

Q. You would call the paper? A. The Wall Street Journal; and the switchboard operator generally knows the amount of pages for that night.

Q. Then what would you proceed to do after finding out the number of pages? A. Well, I knew that if we had seven men on vacation—and I think—out of the seven or eight subs, that those subs would have time. If it was twenty-two pages, I would need four men, at least, not counting trip-ups—men who hadn't advised me that they were taking off ahead of time—and I would have to call and get at least four men to come down and shape.

Q. Was it the practice of regular men at the shop, regular situation holders at the shop, if they were not going to come in to work on a particular night to call you in advance and tell you? A. Well, foreseeing this situation that was going to arise sooner or later where we were going to be

short men, I had let it be generally known that if you are going to take time, to let me know ahead of time.

Q. Generally, they tried to do that?

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A. Yes.

Trial Examiner: Is that what you referred to as a trip-up, when they didn't let you know?

The Witness: That's right.

Q. (By Mr. Richman) When you called these men from other papers, did you call members of the union? A. Not always. On occasion I called non-union men.

Q. Did you first try to get members of the union to come in to work? A. Under the instructions of the foreman, I did.

Q. What were his instructions? A. Well, there was an understanding and instructions that we had to have men in there who could do the work and be moved around to cover situations that were not covered by competent men.

Q. Pursuant to those instructions, you first tried to get union men? A. Yes.

Q. Then, when you could not, you called non-union men? A. Yes.

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Q. So, then, during the summer vacation period, wasn't it a fact that he was shaping at least three or four nights a week? A. Approximately, yes.

Q. Wasn't this the period that you were calling in these men from the outside? A. Yes.

Q. You never called Mr. Julius Arrigale at his home or anywhere else to catch a night's work? A. I didn't, but I had him called. I didn't have his phone number, but I

can remember once at least to have his brother-in-law call him.

Q. Mr. Nutini? A. Yes.

Q. But he would be hired only if there were no card men

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available; is that correct? A. Yes.

Q. Was there on order in which the men went to work in the mail room? A. All the way down the line, starting from the top?

Q. I don't mean individuals; I mean by particular groups? A. Yes.

Q. Did the regular situation holders go first? A. Yes.

Q. There the regular substitutes? A. Yes.

Q. Then did you put to work any outside card men on the floor who didn't have five days in the particular shop that they normally worked? A. Yes.

Q. And then, following them, you put to work outside card men from other shops who had their five days but were trying to catch an additional night? A. Yes.

Q. Finally, if there were no card men left, you put to work non-union men who happened to be shaping? A. That's right.

Q. Was Arrigale the oldest of the non-union men who shaped the shop? A. No.

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Q. Who was older in time than Arrigale? A. A fellow named Michael Ford.

There has been testimony different than that, but I think if some of the people involved refresh their memories, they will find it is Mike Ford.

Q. To your recollection, it was Mike Ford? A. That's right.

Q. Did he shape as regular as Arrigale? A. He was also periodical. He would come in for one period of time, and then I wouldn't see him, and then he would come in again.

Q. Isn't it a fact that during 1956 Ford shaped much less than Arrigale? A. I couldn't say.

Q. What is your best recollection now? A. During all of 1956?

Q. Yes, generally.

If you can't remember all, let's break it down into parts. A. This is a long time ago. I couldn't honestly say one way or the other. The only thing I can recall is that Mike Ford was there longer, and I'm pretty sure that when the two of them were shaping, Ford got the day's work over Arrigale, I think.

Q. Was Ford one of those non-union people you said you

called during the vacation period? A. Ford I called, yes, I did.

Q. Do you keep a list of the vacations which men earn in a particular year? A. Do I keep a list of it?

Q. Yes. A. Only the steady men.

Q. You don't keep a list of any but the steady men, do you? A. No.

Q. I would like to see if you can recall about Mr. Ford. During the summer of 1956, do you recall whether Ford shaped as regularly as Arrigale? A. I remember now. 1956, in June, union cards were issued, and Mike Ford had gotten a union card and was confined to the Journal American, and I think that's about the time he stopped coming down.

Q. Therefore, after June of 1956, Mr. Arrigale was the oldest non-union shaper around, wasn't he? A. Yes.

Q. It is true, isn't it, that when you were calling outside card men during this summer vacation period, there was work available that Arrigale could do? A. Not necessarily, not without somebody in the shop making concessions. I might have to give up my job to make room for

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him. There is always work in the shop that he can do if you can confine him to one job, but the foreman would have to take me off my job, which might be the only one he can do.

Q. Mr. Arrigale worked on the conveyor? A. That's right.

Q. You worked on the jogging? A. That's right.

Q. And he worked on the belt, too? A. Yes.

Q. He worked on those three jobs as a result of the policy of switching? A. That's right.

Q. Isn't it a fact that some of the outside men you called during the summer did those three jobs and nothing else during the entire evening they worked for the Journal? A. Occasionally they did nothing else, and on occasion they did other jobs.

Q. Isn't it a fact that all the outside men you called in to work were assured of a night's work when they showed up? A. No.

Q. Did any of them walk? A. One or two or three might have to walk. I would call Fairchild Publications and tell the fellow up there that we need men, and I would call the Telegram, and subsequently they both might come in with four men and two guys will walk.

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Q. When you had these groups of men coming in, did

you make a selection as between them and determine which was going to work? A. No, sir.

Q. Who made the selection? A. The foreman.

Q. Did you advise the foreman on how he should select these men? A. The only advice I would give him—he may ask me, "Any of these men haven't had their five days?" If I knew, I would tell him, and if not, one of us would have to ask the men themselves.

Q. Did the men normally come to you and tell you about the situation with respect to their five days? A. Occasionally, yes.

Q. Isn't it a normal practice for the men to come to you and tell you where they stand in their outside position? A. Not all of them. Some would just come in and shape knowing that if it came to a point where it was him or another man, they would have to be asked.

Q. Who would do the asking? A. Whoever happened to be there, the foreman or I or the assistant foreman.

Q. Were there times when the foreman wasn't there and you were there?

A. Yes.

Q. And were there times when neither the foreman nor the assistant foreman were there, and you were there? A. At the sign-up sheet, you mean?

Q. Yes. A. Yes.

Q. Did you determine the order in which these men would go to work when the assistant foreman or foreman were not there? A. No.

Q. What would you do, if anything? A. The foreman would say to me, "Are any of these men subs?"

I would say, "This one and this one."

Q. You mean subs of an outside shop? A. Yes; men who weren't sure of getting five days' work.

And I would tell him which ones were, to the best of my knowledge.

Q. Would he hire them first? A. Yes.

Q. Were there times when you entered the names of the regular subs of the Wall Street Journal on the sign-up list in place of the situation holders? A. Were there times when I altered this?

Q. When you entered it. A. You didn't actually enter it. I would come in and

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know it was twenty-two pages and four men were off, four steady men. So, the first four subs would come in and they might go over and start shaping with someone before they signed up, or may go in and start to get into a card game or something, and I would tell them, "You know, you are working tonight," and that would be the extent of the telling. "You better sign up;" because if a man's name was not down there by 6:30, he wouldn't work.

Q. Did you do the same thing with respect to the card men from the outside shops coming in and saying, "You know you are working tonight, you and you are working: and you others, we are filled up"? A. The only time I would do something like that would be if we needed five men and there are only two men then. I couldn't tell them to sign up. I would tell them, "Go to work," because we were short of men; but never to sign up.

Q. Were the practices and procedures you followed as chapel chairman the same as the practices and procedures of your predecessors, the people before you in that position? A. I couldn't really say. I was only in the shop a year and I became chairman. At that time there was quite a bit of dissension, and I didn't get into the swing of things for a few years.

Q. As far as the time you were chapel chairman, did you follow the same procedures we discussed here?

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A. Generally speaking, yes.

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CROSS EXAMINATION:

Q. (By Mr. Sugarman)

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Q. What would happen to that production if you didn't round up experienced men from other shops? A. Well, let me put it this way: We are more conscious of production and making trains in our shop, more so than other shops around the city, because it is the Wall Street Journal. It is like buying yesterday's scratch sheet today;

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it's a waste of time.

Of course, you can get the results, but it would be the same thing with people looking for the stock market reports.

Q. Is that the consequence you would foresee if you didn't have sufficient experienced men? A. That is the consequence that has been drummed into us.

Q. Couldn't you make up your total needs for this supplementary force when your paper is running heavier and larger from the Julius Arrigale and other casuals around?

Mr. Richman: Objection. There is no evidence that there are others shaping.

Mr. Sugarman: I think we have some evidence that others shape.

Trial Examiner: I will let him answer.

A. Only at a hardship to the other men in the shop.

Q. Resulting from what? A. To have one non-union man or one man in Arrigale's class, as far as competency is concerned, is bad enough in the shop. When you have to pull up for three or four of them, you have done a night's work.

Q. Is it not a fact that your calls to other shops for men is not only for the purpose of getting experienced men, but because it was a kind of buckshot way of spreading the word around that in a big place for the men you needed without making isolated calls?

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A. That was the general reason for making those calls. If you will notice, I only called the day shops where those men are working days to come in at night if they wanted an extra day, because those were the men that would come down to shape the night.

Q. Who would you call, a shop chairman or a foreman? A. Whoever answered the telephone in the mail room.

Q. And you would say, "This is Eddie Mitchell at the Wall Street Journal. We can use four or six men tonight," or something like that? A. Well, if it was the foreman—if I elaborate on that, I will bring in three or four pages of testimony; but generally, yes, that was the way it was conducted.

Q. Was there a conversation about this—"Hold the wire a minute. I will see how many boys there are, or how many want to go down?" Would you wait for a conversation? A. The only time we would wait for a conversation to be complete was after it was 6:30 already and we were short men. Then I would have to get a specific man. I would have to call someone's home, or I might call the Mirror or Journal of Commerce, and say, "We are

short a man. Do you have someone there?" Then I would have to wait for an answer.

Q. But if you had ample time? A. If I called three or four in the afternoon, I would leave word with the one that I called, unless I didn't know

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who it was.

Q. Would you call the Journal of Commerce and leave that message, and then call the News, and another paper, so that possibly you would have twenty guys coming down for five jobs? A. Not to that extent, no. If I called Fairchild, generally I spoke to Phil Loughran, Jr., and I would tell him, "We are going to be short today at least five or six men," and there might be one or two men that might want to come down, and he would come down with them.

I would call Dick Gifford in the Telegram, because he had been shaping for years and years. So, as a courtesy, we always gave Gifford a call, and he might tell one or two men in the Telegram to come down.

Q. Did it ever happen in making such a call to another newspaper, and their sending some men down to you or relaying the men to you, that they would relay some non-card men or a union card man? A. Yes.

Q. Did you place an order for card men as such? A. No.

Q. You said "men"? A. I said "men."

Q. You now said that it sometimes did happen that they sent a non-card man.

Can you remember a specific instance?

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A. Yes. I, on occasion, called Nicky Calafato in the Journal, and I told him, "I am going to need several men.

Tell a few of the fellows," and this Mike Ford would come down.

Q. He was then not a card man? A. He was then not a card man; and I remember an occasion when I knew the night before that they were going to be short. I can remember telling Nutini, "Tell your brother-in-law there is going to be work for him tonight."

Q. Michael Ford, you say, also shaped irregularly as a non-card man, as had Julius Arrigale? A. That's right.

Q. Was he related to somebody, to a union member, perhaps? A. Not to my knowledge.

Q. Did you ever bar a man because he was related to a union member? A. No.

Q. Did you give him any special break because he was related to a union member? A. A special break because he was?

Q. Yes. A. Not in the sense that we gave him a break in the work.

Q. Let me ask you, was there ever any understanding, a tacit understanding, perhaps, with another category of employees, non-card men, who were related to union members as

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distinguished from non-card men who were unrelated? A. No.

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Q. Did Julius Arrigale ever get assigned to any of these things whatever whenever he doesn't have escalator or jogging work to do; and if so, to which of these jobs? A. The only thing I can think of that he was put on in this instance that we are discussing would be maybe to

count out odds. We might have paper in the back stacked next to the escalator which aren't counted. We are feeding the machines in bundles of one hundred or fifty. He might be there counting those.

Q. Do you actually remember him ever doing that? A. I can't say I specifically remember.

Q. But you think that's about all he could be assigned to?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) Why did you mention counting out odds? Have you ever heard of his doing it? A. I can't remember him doing it, but that is the only job I think he can do.

Q. Are you suggesting that normally in the course of an evening while other men work for six and-a-half hours, or the better part of it, Julius Arrigale, when he is working, works for maybe three and-a-half hours productively, and the rest of the time he is dead weight around there? A. Definitely.

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Trial Examiner: He doesn't work for three hours each night?

The Witness: I would judge he works a good hour or hour and-a-half less than other men in the shop.

Trial Examiner: You have seen him standing around idle, doing nothing?

The Witness: Yes.

Trial Examiner: For an hour or hour and-a-half?

The Witness: Not all at one time; fifteen minutes now, fifteen minutes when the press breaks, a half-

hour while we are waiting for the one star replate to be finished up on the machines. Where the other men are lending a hand, he couldn't actually lend a hand.

Q. (By Mr. Sugarman) You said that there were some nights on which several men would walk, that there wasn't enough work to take on all the men who were shaping; is that right? A. That's right.

Q. Were they only non-card men who would walk in such instances? A. No; card men would walk.

Q. Card men and non-card men? A. That's right.

Q. Were there nights when Julius Arrigale walked when card men walked with him, too?

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A. Yes.

Q. These were generally card men from other shops, I take it? A. Yes—wait a minute; card men from our own shop have walked when he walked.

Q. Your regular subs? A. Yes.

Trial Examiner: That's because there wasn't enough work for all the subs?

The Witness: Yes.

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Q. (By Mr. Sugarman) Did you ever have any gripe, grievance or protest brought to you about Arrigale by anybody in the shop? A. Oh, yes.

Q. By whom, and what was the nature of it? A. Mostly the operators. They were usually complaining about him not keeping up with the machine.

Trial Examiner: Why would they complain to you?

The Witness? Well, with due respect to the foreman, he sometimes is too lenient and they will complain to him and they will think he hasn't taken the necessary steps of what he should do about it.

Q. (By Mr. Sugarman) Aren't grievances supposed to be channeled through you as chapel chairman? A. Yes. They will come running to me and complain that they spoke to the foreman and he didn't do anything about it. They won't refer to him in kind words—"Gee, we are breaking

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our necks working for this guy."

General gripes, but they were legitimate. The man couldn't jog up. You have to feed these papers into the machine. They have to be perfect all around and fed into the machine, and if the papers aren't perfect it causes misses, because you have a sucker bar; it comes down and lifts a paper up and a cam pulls the paper into the machine, and if they are not perfect, the sucker bar won't lift it and you have a miss in the machine.

The operators have to keep jogging the machine into position and put a new paper under it and start the machine again.

Q. Was Nutini a machine operator? A. At that time, no.

Q. I take it in any case he was not one of those who complained to you or Every about Arrigale? A. No.

Q. Did Nutini ever speak to you about Julius Arrigale? A. Not about his work.

Q. Did he speak to you at all about him? A. He spoke to me several times about getting the union card.

Q. When was the first time and when was the last time he spoke to you about getting Julius Arrigale a union card?

Mr. Richman: I object. I don't see the relevancy

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Trial Examiner: I will let him answer.

A. Well, the union had been making provisions and processing a system for handing out a good number of union cards all during the spring of 1956.

Q. That led up to the big induction of June 10th, 1956? A. That's right; and it had been going rather slowly through the union processes, and Nutini came to me several times, and he is not the kind of man that you can explain an issue to if he thinks the other way, and we discussed it back and forth several times. I told him he would have to see Mr. Smollon.

I attend all union meetings and I know what is being taken into consideration and what isn't, where he doesn't. So I couldn't explain to him to make him understand, and I told him to see Bill Smollon, which I know he did, because one day I saw him down there.

Q. Did you comment to Nutini as to the quality of Arrigale's work and his work record? A. No, I didn't.

Q. Do you remember any reference to the New York Times in your conversation with Nutini? A. Yes.

Q. What was that? A. I told him that he would probably have a better chance

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of acquiring more work, building up a continuity in the union and better himself and the amount of work he would be able to do, if he were to shape the New York Times rather than the Wall Street Journal, because the amount of work available in the New York Times is much more than the Wall Street Journal.

Q. Were you suggesting that he broaden his experience? A. Yes.

Mr. Richman: Objection.

Trial Examiner: The answer is already in.

I think you have gone far enough afield on this line.

Q. (By Mr. Sugarman) You said that you, yourself, never called Julius Arrigale to come to work? A. That's right.

Q. You never called him for any purpose; is that right? A. No, I never did.

Q. Did you have Julius Arrigale's phone number? A. No, I didn't.

Q. Were there times when you thought there might be work for him when you spoke to Nutini about it? A. Yes, there was.

Q. About how many times was that, and when, and what did you tell Nutini? A. It was only a couple of times. If I knew we were going to be in bad shape the next night for a man, I would tell him to tell the brother-in-law to come down, that we may be short

men.

Q. In addition to calling other shops in rounding up experienced men, so-called card men from other shops, did you ever make phone calls to non-card men to come in to work? A. Well, I had a number of card men I would call, and more often than not, if I just couldn't get any men, there were guys in the shop who had come to me and said, "If you need somebody, I can get you somebody," and I would go to Curto and he would call a brother, and I would go to Nutini and he might call Julius or

Joseph, and I might go to Artie Guilfoyle and he might call his son. These were on all occasions.

Q. You were in desperate straits at that point to get anybody, irrespective of his experience, just to plug in? A. That's right.

Q. As a matter of fact, on some occasions did you not tell me that you went so far as to call office boys from the Wall Street Journal to come down? A. Yes. If we were in really bad shape—I am not allowed to do this any more—at five o'clock we would get one of the office boys to come down.

Q. A boy without experience? A. Without any experience.

Q. Those hurried calls were made at about 6:30 or close to 6:30, when you not only know the size of the paper, which

you had learned earlier, but you would be seeing how many men were tripping? A. It could have been after 6:30. There were nights I tried to get men up to 7:30.

Q. The presses were running already? A. Yes.

Q. Incidentally, were you at the shop pretty consistently during 1956? A. The only time I had off in 1956 was three weeks vacation.

Q. What part of 1956 was that? A. Last year was when my wife had the baby, and the year before I took time off to campaign—I wouldn't say.

Q. About how much time did you take off in 1955? A. I don't think any. I think I worked every day in 1955 and 1956, and this is the first year I took days off.

Q. When did you take the three weeks in 1956? A. I can't remember. I only remember one week in November.

Q. Apart from that vacation, you worked each and every night? A. That's right.

Q. So you would know every night that Arrigale came in other than on your vacation nights? A. That's right.

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Q. I don't think I asked you this:

Did Mr. Every ever tell you to call around and get card men? A. He didn't say specifically "card men," that I can remember.

Q. How would he put it to you? What would he tell you to get? A. He would come over and say, "We are short four men. You better get them." He didn't say card men or otherwise.

Q. When you called other shops or homes or offices, friends and friends' friends, *et cetera*, how would you ask for men? How would you refer to them?

Would you say, "Do you have any spare card men around," or put it that way? A. No. Generally, the practice was that I would try to get card men.

Q. Would you specify, "Are there any card men that I can have?" A. No.

Q. How would you put it? A. Well, I don't think I've ever run into a situation of that sort. I would call a newspaper if it was after 6:30 at night, and I would ask for a specific man, or if I couldn't get a man that way, I would call the Knickerbocker Bar and Grill over by the Journal-American.

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Q. If of a particular night you were around and Mr. Every was at the sign-up list and two men presented themselves and you needed but one man, and one was a non-card man who had had very considerable experience to your knowledge, and the other was a card man who had

very incomplete experience to your knowledge, and if Mr. Every hired the non-card man, would you feel it your business as chapel chairman to protest?

Mr. Richman: Objection.

Trial Examiner: I will sustain the objection.

Q. (By Mr. Sugarman) It was one of your duties as chapel chairman, under the constitution of the local union, to see that none but members of the union were hired? A. Wait a minute. I don't know specifically what clause in the by-laws you are talking about.

Q. Let me read it to you,

In Article 15 of your local— A. Is that Section 4?

Q. Article 15, Section 4, duties of chairman:

"He shall see that none but members of Mailers' Union 6 are employed in his chapel, and immediately report in writing to the President the name of the non-union employee employed, and reason for the same."

Trial Examiner: That is General Counsel's 5 you are reading from?

Mr. Sugarman: Yes. I think he referred to Section 4

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of Article 15 in that exhibit.

Q. (By Mr. Sugarman) Did you regard it as your duty to see to it that none but members of the union be hired? A. No, I couldn't.

Q. Why not?

Were you relieved of the obligation by the president of the union? A. Yes; and I have run into an instance myself where I have been deprived of work in favor of non-union men.

Trial Examiner: When was that?

The Witness: I would judge six years ago. I had my card about a year, and I went to the Times to shape one Saturday afternoon and I wasn't put to work.

Trial Examiner: That was another paper six years ago?

The Witness: Yes; about five years ago.

And not knowing the law, I complained to Bill Smollon and anybody that listened to me. I didn't go to work that time. So I have been conscious of that in the by-laws, and know it wasn't of any value in the by-laws for quite a while.

Q. (By Mr. Sugarman) By "quite a while," you mean what, since what? A. Since that time I had run into a question concerning this section of the by-laws.

Q. What had taken the value of it away from the by-laws,

as you put it? A. The Taft-Hartley Law.

Q. You knew that? A. I did.

Q. Was that explained to you by Mr. Smollon back six years ago when you ran head-on into the question? A. I was mad at him for quite a while over it when it was explained to me.

Q. Have you ever reported, as chapel chairman, in accordance with your described duties as I have read them to you, to the president of the union the name of all non-union men employed in your chapel, with the reasons for the same? A. No, I have never complied with that law.

Q. Have you ever been requested by the president to make such filings with him? A. No.

Q. Finally, did you ever tell Mr. Every, or any other

management representative, that you demanded or wished permission to do the hiring yourself? A. No.

Q. Did they ever require you or tell you that you might do the hiring?

Did Mr. Every or any other management representative ever tell you or require you to do the hiring? A. No.

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Q. Did you ever do the hiring? A. No, I never did.

Q. Did you ever decide who was to be hired? A. As I said before, the only time I may have said who was to be hired was when I would relate to the foreman who didn't have five days work, of card men who were available on the floor, and he would try to give it to the man who didn't have his week's work in.

Q. You knew the basis on which he was doing the hiring, so you provided him with the information? A. That's right.

Q. Do you know of any agreement or arrangement or understanding or practice entrusting to the union, through you or anyone else, the duty of hiring?

* * *

A. The duty of whose hiring, the foreman or the chairman?

Q. Do you know of any agreement, arrangement, understanding or practice in the Wall Street Journal entrusting the duty of hiring to the union, through you or anyone else? A. No.

Q. Do you know of any such agreement, arrangement, understanding or practice preferring union men as such over non-union men in hiring or in any work opportunity?

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A. No, I don't.

Mr. Sugarman: I have nothing else.

RE-DIRECT EXAMINATION:

Q. (By Mr. Richman) When you first took office as chapel chairman, did Mr. Smollon say anything to you about your obligation under the by-laws to see that union men should be hired? A. He did not.

Q. Did he say that you were relieved of that obligation? A. Of what obligation? Article 15, Section 4?

Q. Yes. A. I had been told of that previous to my becoming chairman.

Q. What did Mr. Smollon tell you about that exactly? What did he tell you? A. I had complained to Mr. Smollon about my not being hired in a certain shop in the city, and that I felt I should have gone to work, and I was mad, and I had been a new man in the union, so I wasn't familiar with the laws. It was on a Saturday, I think, I called him up at his house. I raised havoc over it, but it was explained to me that there was nothing he could do about it.

Q. Is that what Mr. Smollon told you? A. He told me it was not within his jurisdiction to do anything about it if those men had prior preference over me.

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Q. At the New York Times? A. Yes.

Q. Did he say anything to you about the fact that this article of the by-laws, of this section, was not to apply at all? A. Those specific words I couldn't recall.

Q. What you do recall is that he said he could not do anything about the situation at the New York Times? A. I quoted this law to him; he didn't quote it to me.

Q. He said he could do nothing about it? A. Nothing to do about it; it is out of his hands.

Q. Did he say anything in that conversation about the

Taft-Hartley Law? A. I can't remember if that is when I related it to the Taft-Hartley Law or at a later date.

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RE-CROSS EXAMINATION:

Q. (By Mr. Sugarman) Were you ever told by the union the order in which, or the basis on which, you were to see the non-card men hired by the foreman? A. Never.

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Stenographic Transcript of Testimony at Hearing of November 20, 1957.

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Before: Louis Libbin,

Trial Examiner.

Appearances:

Harold L. Richman, Esq., 2 Park Avenue, New York, New York, appearing on behalf of the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, By: Donald J. Bain, Esq., 220 East 42nd Street, New York, New York, appearing on behalf of the News Syndicate Company, Inc., and Publishers' Association of New York City.

Sidney Sugarman, Esq., 295 Madison Avenue, New York, New York, appearing on behalf of New York Mailers' Union No. 6, Respondent.

Gerhard P. Van Arkel, Esq., 1701 K Street N. W., Washington, D. C., appearing on behalf of International Typographical Union, AFL-CIO, Intervenor.

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PROCEEDINGS.

Trial Examiner Libbin: The hearing will come to order.

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Mr. Richman: The differences from 1955 are contained in the following sections of the general laws:

Article 5, Sections 10 and 11 of the 1955 laws are now numbered Sections 11 and 12 of Article 5 in the 1957 general laws.

Furthermore, there are changes in Article 7, Section 1; Article 8, Section 1; Article 10, Section 5, and Article 10, Section 6.

I offer General Counsel's Exhibit No. 20 into evidence.

Trial Examiner: I also take it that the same changes which occur in the 1956 laws are also embodied in the 1957 laws?

Mr. Richman: Yes, as far as I have been able to determine.

I might also note for the record that it is the contention of General Counsel—and I think it is clear under the two agreements in evidence, General Counsel's Exhibits 2 and 3—that General Counsel's Exhibits 19 and 20 contain the general laws referred to in those agreements.

Trial Examiner: There being no objection, that may be received.

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Mr. Richman: There is one further matter.

Mr. Van Arkel, at an earlier stage of the hearing, referred to certain unfair labor practice charges which were filed against the International Typographical Union and

various of its International Officers by the American Newspaper Publishers' Association in another Region.

I believe he had reference—and I think he will agree that he had reference—to the charges filed in the 9th Region. The case number was 9-CB-74, and I would like to have marked for identification, and offer in evidence, the following:

As General Counsel's Exhibit 21(a), the original charge against the I. T. U. and its officers in Case No. 2-CB-74, filed on July 20th, 1950, by General Manager of the American Newspaper Publishers' Association.

(Thereupon, the document above referred to was marked as General Counsel's Exhibit No. 21(a) for identification.)

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Mr. Richman: As General Counsel's Exhibit 21(b), the amended charge against the I. T. U. and various of its officers, in the same case, filed on January 8th, 1951, by the same charging party.

(Thereupon, the document above referred to was marked as General Counsel's Exhibit No. 21(b) for identification.)

Mr. Richman: As General Counsel's Exhibit 21(c) a copy of a letter from Jack G. Evans, Regional Director of the Ninth Region, to Messrs. Van Arkel and Kaiser, advising of the withdrawal of the charge in Case No. 9-CB-74 without prejudice.

(Thereupon, the document above referred to was marked as General Counsel's Exhibit No. 21(c) for identification.)

Mr. Van Arkel: Would you be willing to stipulate that these charges were thoroughly investigated by the Regional Office?

Mr. Richman: To the best of my knowledge, they were. I know they had an investigation. As far as the thoroughness goes, I don't want to be in a position to

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judge, but I know there was an investigation.

Mr. Van Arkel: Believe me, it was thorough. It lasted about three years.

I think this is, in any event, a subject for judicial notice of the Examiner.

Trial Examiner: At any rate, you have no objection to the offer of these documents?

Mr. Van Arkel: No.

Trial Examiner: They may be received.

(Thereupon, the documents previously marked for identification as General Counsel's Exhibits Nos. 21(a), (b) and (c), were received in evidence.)

Mr. Richman: That concludes the case in chief of the General Counsel.

Mr. Van Arkel: I would like to add, Mr. Examiner, with respect to this last exhibit, that it is my memory that there were companion charges filed which were dismissed rather than withdrawn. I will have to check my record on that because my memory is a little bit hazy.

Trial Examiner: Mr. Van Arkel, did you have something to present?

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Mr. Van Arkel: Yes, sir.

At the time Mr. Randolph was on the stand, I had intended to introduce as an exhibit a document headed "Information for Local Union Officers, Scale Committees, *et cetera*," which was issued April 1st, 1951, which was distributed by the International Typographical Union at that time and since to local unions and scale committees.

I understand Mr. Richman is willing to stipulate that this exhibit may now be received as if Mr. Randolph had identified it if he were on the stand.

Mr. Richman: You said, Mr. Van Arkel, that this has been distributed since.

Do you mean by that that there is current distribution of this particular document?

Mr. Van Arkel: Yes.

Mr. Richman: Would Mr. Randolph testify to that?

Mr. Van Arkel: Yes.

Mr. Richman: Upon that understanding, I have no objection.

Trial Examiner: That will be Intervenor's Exhibit No. 9.

(Thereupon, the document above referred to was identified as Intervenor's

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Exhibit No. 9, and was received in evidence.)

Mr. Sugarman: I would like Mr. Smollon to resume the stand.

Trial Examiner: You are now presenting your case?

Mr. Sugarman: That is correct.

Whereupon,

WILLIAM E. SMOLLON, called as a witness by and on behalf of the Respondent, and having been previously duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Sugarman) How long have you been president of Mailers' Union No. 6? A. Fifteen years.

Q. How long have you been a member of that local? A. Including an apprenticeship, forty-eight years.

Q. How long have you worked in the trade as a mailer? A. Forty-eight years.

Q. How long an apprenticeship did you serve? A. Four years.

Q. That was, I take it, at the beginning of your hitch in the trade? A. Yes.

Q. Before I forget this little thing, let me dispose of

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it now and then get to the main course of my examination. Were you present when Mr. McCarthy of the Wall Street Journal testified? A. Yes.

Q. Do you recall his testimony that the present production manager of the Wall Street Journal is a member of the I. T. U.? A. Yes.

Q. To your knowledge, was Mr. Stewart, who was the national production manager before Mr. McCarthy, also a member of the I. T. U.? A. He was, but he has a withdrawal card.

Q. Is he a member as such in good standing in the I. T. U.? A. With a withdrawal card, yes. Until he redeposits his card, he has no standing in the I. T. U. He is a withdrawn member, in other words.

Q. Had he worked at the trade, or was this an honorary membership? A. No; he had worked at the trade.

Q. Is it customary— A. Pardon me, but can I just add to that that at one time he was field representative for the I. T. U. He told me that himself, in the northwest.

Q. You heard the testimony yesterday that Mr. Stewart today is an assistant, I believe, to the vice president in

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charge of policy and planning, or something of the kind? A. That's right.

Q. Is it uncommon in the printing trades in the city, and particularly in the newspaper publishing industry

here, for executives of the publishers to be members of the I. T. U., or other sister union? A. It is a common practice.

Q. Can you mention, for example, some such executives who are and have been members of the I. T. U. among the signatories to the publishers' collective bargaining agreement with you? A. Ed Martin was for years mechanical superintendent of the old New York Sun. He is a very old man now and I don't know whether he is still connected with the industry or not. For many years he was mechanical superintendent, and then I think he had a higher position than that on the Sun.

Q. What about some who are around and kicking now? A. At the present time, Horace Therein, he is mechanical superintendent and production manager of the Fairchild Publications.

Capps, of the Wall Street Journal, he is a mechanical superintendent down there.

Nick Baranda, on the Long Island Press, is production manager and mechanical superintendent.

Trial Examiner: These gentlemen that you are naming

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now, do they have withdrawal cards?

The Witness: No. They are all active members in the International Typographical Union, these ones that I have mentioned so far.

I think on the Tribune, Hayes is a press man, and I think he is a mechanical superintendent. He may be superintendent of the press room. That has gone on through.

On the New York Times, the mechanical superintendent there—I am not sure today, but they were in there.

At the News, the mechanical superintendent there was a member of one of the printing trade unions.

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Q. (By Mr. Sugarman) Has the union had occasion from time to time to deal with these executives above the level of foremen on matters pertaining to contract and contract administration? A. About the level of the foremen?

Q. Yes.

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A. Of course.

Q. In some cases were some of these executives you have identified? A. In many cases.

Q. Has this been in both matters of contract negotiation and in the processing of grievances? A. Yes.

Q. Would you offer an opinion as to whether you found it especially easy going to deal with these executives on your union matters?

Mr. Richman: Objection.

Trial Examiner: Sustained.

Q. (By Mr. Sugarman) Did any of these executives ever tell you that your union would have the control of the hiring in the mail room? A. No.

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Q. (By Mr. Sugarman) Did you work at the trade as a mailer until the time you became full-time president of the local union? A. Yes.

Q. Did you work at the various newspapers around town from time to time? A. Yes; and also the job shops.

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Q. In the course of time, did you come to know all of the processes of the mail room operation? A. Yes.

Q. And have performed all of them yourself? A. Yes; practically all of them. The late machines in the last fifteen years I haven't been on.

Q. Time has caught up and passed you on those machines? A. That's right.

Q. And, I expect, will do so in the future as well? A. I hope so.

Q. As a matter of fact, your present collective bargaining agreement in evidence provides for the first time, does it not, in Section 2(b) thereof, for the preservation of your historical jurisdiction, as it is put, over the operation of new machinery designed to supplant or substitute for machinery or work now exclusively under the union's jurisdiction? A. Yes.

Q. Apart from the introduction of new machinery which may have come after your time, you had performed all of the hand work at any rate, had you not? A. Yes, I had.

Q. Had you done any machine work at all? A. Yes.

Q. How long has the local union had an apprentice program of any kind or of any scope?

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A. As long as I have been a member. I served four years from 1909 to 1913 myself.

Q. Are you familiar with a rather recent recasting of the training program for apprentice mailers adopted by the Joint Apprenticeship Committee June 25th, 1957, pursuant to provision therefor in Section 27(b) of the current collective bargaining agreement? A. I am.

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Q. (By Mr. Sugarman) I show you this document consisting of four pages, with a sticker on the first or top page, and ask you what it represents. A. An apprentice-

ship committee was set up during the last scale negotiations to set up a training program for apprentices to show each year what they would do from the first year to the sixth year of their training. It is now part of our contract; it has been made part of our contract.

Q. Have you personally examined and studied the last

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three pages of that document, being the training program itself? A. Yes, I have.

Q. That sets forth, does it not, the training program in detail year by year? A. Yes, it does.

Q. Does it fairly, in your judgment, represent the scope of the work and the details of the work making up the skill of the competent journeyman mailer? A. At the end of a six-year period, a boy coming in the business and following this practice over the years that he would be putting his training in, he would be, I would say, a very competent journeyman.

Q. Are there any other performances of a journeyman mailer that you know of that have been omitted from this program? A. This was gone through at several meetings. They held them while scale negotiations were going on, and there isn't anything that I can think of, after going over this, that is left out. I am sure everything is in there that a boy should know.

Q. Is each and every one of those elemental functions expected to be within the competence of a journeyman mailer? A. Yes.

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Q. (By Mr. Sugarman) Prior to the adoption of Mailers' Exhibit 8, provision had been made in your prior

collective bargaining agreements for the creation of apprenticeships, the promulgation of rules governing apprentices, the governance of an apprentice program by a Joint Apprenticeship Committee, *et cetera*, with scales of wages and so on.

Was there, prior to Mailers' Union Exhibit No. 8, an apprenticeship program? A. A spelled out program like this is?

Q. Yes. A. No. There was an apprenticeship program, but it was taken care of between the foreman and the men in the shop who would teach the boy.

Q. Had there ever been a written apprenticeship program as far back as you can remember, the details of which came to your notice? A. No. He had a thorough training, though.

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Q. I understand that.

I was wondering whether it had ever been spelled out before. A. No, it had never been spelled out that I can remember.

Q. Did you, in fact, have apprentices prior to June 25th and the adoption of this particular program now in evidence? A. Yes.

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Q. (By Mr. Sugarman) I show you this three-page document, Mailers' Exhibit No. 9 for identification, and ask you what that represents. A. These are mailer apprentices from January 1st, 1947, to September, 1957.

Q. Is that a list of all the apprenticeships that can be created and which were occupied by employees of the newspaper publishers from January 1st, 1947, compiled from your records at my request? A. Yes.

Q. I asked you, did I not, to go back to 1947, and not to

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bother to go back further than that? A. Yes.

Q. And to bring it up as close to date as possible; is that correct? A. That is correct.

Q. That document shows the number of such apprentices, their names, and other information concerning the apprentices; is that right? A. That is correct.

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Q. (By Mr. Sugarman) If my count is correct—and I have rechecked, and I think it is correct—there were fifty-one apprentices listed on Mailers' Exhibit No. 9 for that period, January 1st, 1947 through September 30th, 1957.

Have you checked that number yourself, or will you take my word for it? A. I will take your word for it.

Mr. Sugarman: Incidentally, I want to call to your

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attention that page three of the list happens to be on top, and it should be on the bottom.

Trial Examiner: That list doesn't indicate for what paper these apprentices work?

The Witness: I don't think it does.

Mr. Sugarman: It shows the date on which the apprenticeships started, the register number, the date he was obligated as a journeyman, if he was, and his journeyman register number, if he had one.

Q. (By Mr. Sugarman) I note in this document that of the fifty-one, only two never became obligated as journeymen, they being Robert Guilfoyle, who had been apprenticed on September 25th, 1953, and Joseph Powers, who had been apprenticed on November 17th, 1946, with a no-

tation in each case that Guilfoyle and Powers had left the business.

Apart from that, all the other forty-nine are indicated to become journeymen on stated dates.

Mr. Richman: Mr. Sugarman, may I ask what "date obligated as journeyman" means?

Mr. Sugarman: I was going to do that now.

Mr. Richman: Also, what the journeyman register number means.

Mr. Sugarman: All right.

Q. (By Mr. Sugarman) What is meant by apprentice register number?

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A. That would be his registration number he would get from the International Typographical Union.

Q. The fact of his apprenticeship is recorded with the I. T. U. and he is registered in the I. T. U. records as an apprentice; is that correct? A. After he is in one year in the office. The foreman appoints him first, and then he is in a year and then he gets his registration number, and we send his name on to the I. T. U.

Q. What is meant by the date obligated as journeyman? A. That is his registration number with the I. T. U. as a journeyman card holder.

Q. Does that mean he has completed his apprenticeship, or at least moved out of the status of apprentice? A. He has moved out of the status. He has completed his full apprenticeship or he may have been upgraded.

Q. What is the shortest time in these recent years, let's say from January 1st of 1947 to date—the shortest time in which an apprentice was upgraded to journeyman? A. About two years.

Q. Can you recall any instance where an apprentice was upgraded to journeyman status faster than that? A. No, I don't.

Q. Does an apprentice shape for his work, or does he have a steady job?

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A. An apprentice has a steady job.

Q. Five days a week? A. Five shifts a week.

Q. So that in the course of two years or more, he would have had very considerable opportunity to learn his trade; is that right? A. That's right.

Q. What have been some of the occasions for shortening the apprenticeship period? A. Need of men to cover positions; the need of journeymen.

Q. Would the union just decide upon this and would the union unilaterally decide the man is now a journeyman? A. We naturally gave them an examination, the same as we do any other journeyman who graduate from a journeyman into a card member. We give them the same kind of an examination as we did any other journeyman who was getting a card.

Q. Having done so, would you then just decide and announce that he was a journeyman, or was this something that had to be cleared with management? A. He had to be voted at a meeting of the union. He has to get a three-quarter vote to become a member of the union.

Q. To become what? A. A member of the union.

Q. I am not asking about membership in the union. I am

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now asking you about his becoming a journeyman.

Do you declare him a journeyman, or is this something that has to be cleared with management? A. That must

be cleared with management. Management could make him put in his full time as an apprentice if they wished.

Q. Has that always been the case, even when the qualifications of the journeyman through the detailed work of the apprenticeship have not been spelled out? A. It has always been the case. The management has the say whether he is upgraded or not.

Q. Have you always had some set ratio of apprentices to journeymen provided for in your contract? A. Yes.

Q. That was always a negotiated matter? A. That's right.

Q. In general, the Publishers wanted what; fewer or more apprentices? A. More.

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Q. Has it been, in general, the objective of the union to keep that ratio down, to have fewer apprentices in ratio to the journeymen? A. To keep it where we have it: One for twelve regular situation holders.

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Q. (By Mr. Sugarman) Before I get on with this line, since Mr. Richman mentioned the constitution and by-laws of your local union, was it ever proposed by the union, in negotiations with the Publishers' Association, or was it ever proposed by the Publishers' Association in such negotiations, that the constitution and the by-laws of New York Mailers' Union No. 6 be incorporated by reference in the collective bargaining agreement as the I. T. U. general laws are? A. No.

Q. No one ever asked for that? A. No.

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Q. (By Mr. Sugarman) Has there ever been a reference in your collective bargaining agreements with the Publishers to your constitution and by-laws of the local union? A. No.

Q. Are you familiar with the fact that during 1948, 1949,

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1950, and up until about 1953, the New York Printing Pressmens' Union Local No. 2 was involved in litigation here at this region of the National Labor Relations Board concerning its hiring practices?

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A. Yes.

Q. Were you familiar with that fact during those years? A. Yes.

Q. Did you become familiar with the fact that I had some participation as an attorney in those proceedings? A. Yes.

Q. As a matter of fact, I discussed the extent of my participation with you, did I not? A. Yes.

Q. Did you become familiar with the fact that a decision and order of the National Labor Relations Board, disposing of that Pressmen's case on the merits, was made some time around 1952? A. That's right.

Q. And that the decision and order of the National Labor Relations Board were later made the subject of a consent decree in the Court of Appeals in the Second Circuit?

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A. Yes.

Mr. Richman: Could we have the citations, Mr. Sugarman?

Mr. Sugarman: Yes.

Case numbers—I won't give you the names; they are all the publishers and a lot of individuals.

Mr. Richman: Was there a volume and a decision number?

Mr. Sugarman: I don't know; I haven't checked that. I will give you the case number.

Case Numbers 2-CA-250 and 2-CB-48; decision and order of the Board on August 19th, 1952, pursuant to a settlement stipulation dated July 3rd, 1952 and approved by the Board, of course.

The record of those cases was certified to the Court on October 27th, 1952 for proceedings leading to a decree, the entry date of which I don't have at hand at the moment.

Mr. Richman: While you are on that, Mr. Sugarman, I would like to ask you rather than the witness because I don't think he knows all the technical points: This decision and order of the Board, I think you said, was based on a settlement stipulation?

Mr. Sugarman: That is correct.

Mr. Richman: Would you then concede that there was no adjudication by the Board of any evidence or testimony

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adduced at any hearing conducted here at the Labor Board?

Mr. Sugarman: There was no hearing. I take it that the Board did more than simply stamp its approval upon a stipulation of settlement.

I know for a fact that it did more than that from my own communications with the Board in Washing-

ton, and from my consultation with the Regional director and the then attorney, William Little, in this Region, who was then in charge of the cases through their entire proceeding.

Mr. Richman: Thank you.

Q. (By Mr. Sugarman) Did I ever read any provisions of the Board's decisions and order in the Printing Pressmen's case to you at the time you consulted with me concerning your mail room hiring practices? A. Yes.

Q. Did I make you familiar with those provisions of the Board's decision and order having to do with regular employment and order of hiring and advancement as among various categories of employees? A. You told me at the time, as I remember it—and we discussed it more than once—

Trial Examiner: The question is whether he made you familiar with it.

The Witness: Yes.

Q. (By Mr. Sugarman) What do you recall of that?

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Mr. Richman: Is my objection still noted to all these questions?

If not, I would like it understood.

Trial Examiner: At this point I would sustain the objection.

Mr. Sugarman: I would like to read the following provision—

Trial Examiner: Are you proposing an offer of proof?

Mr. Sugarman: No; I am moving to my next question.

Q. (By Mr. Sugarman) I want to read you the following provision of the decision and order of the Board

directing the Publishers to: "Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended: (A)"—

Mr. Richman: Are you reading this into the record as a question, or how is it coming in on your part?

Mr. Sugarman: I have a long question, and it is sorrowfully long only because I have to put this in.

Mr. Richman: All right.

Q. (By Mr. Sugarman) —"(A) Place all non-journeymen, including A and B boys, and indentured, temporary and provisional apprentices presently regularly employed in its press rooms"—and the words "regularly employed" have a footnote to them which I will read to you later—"or on leave of absence therefrom, and temporary journeymen who were regularly

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employed by it as boys or apprentices immediately preceding their employment as temporary journeymen on a list in order of the seniority in its employ, but without regard to their job classification or membership or non-membership in the respondent union; and there have as position as temporary journeymen become available in its press rooms, over such persons as are competent therefor, employment as temporary journeymen in order of their ranking on said list and before any other persons are employed for such work; without prejudice to any employee because of any past discrimination against him and without favor to any employee because of any discriminatory preference previously afforded him, provided, however, that nothing herein or in any other provision of this decree shall require any respondent to employ any such employee for journeyman work in preference to an employee or applicant for

employment having previous working experience as a permanent journeyman."

I will read to you the footnote to the words "regularly employed," which you will recall was: "Place all non-journeymen, including A and B boys and various apprentices regularly employed."

"The term 'regularly employed' as herein used includes any employee who has worked for respondent a minimum of eighty-four of the last 130 available employment days immediately preceding the date of this decree. For purposes of computing

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regularity of employment, paid vacation days and paid holidays shall be deemed days worked. Five, and no more than five days in any given work week shall be deemed available to any employee, except that no day shall be deemed available to any employee when such employee was absent due to illness, injury, leave of absence, or service in the Armed Forces of the United States or any State or Territory thereof."

The question I put to you, Mr. Smollon, is this:

Do you remember you and myself discussing this provision which I have read to you at about the time it became a part of the Labor Board's order? A. Yes.

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Q. (By Mr. Sugarman) Incidentally, 130 working days, at the rate of five days a week, would be for how long? A. A six-month period.

Q. Eighty-four worked as a minimum of 130, to be deemed a regular employee, would be something better than three a week? A. Just a fraction better than three a week.

Q. Three would be seventy-eight of the 130? A. Yes.

Q. Do you remember the advice which I gave you concerning your mail room hiring practice on the basis of what the Labor Board had approved in the Printing Pressmen's case for the press room? A. Yes.

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Q. (By Mr. Sugarman). What was that advice? A. Then when we were getting ourselves in order to take in new members from there on, we went on the basis of three a week or better, and we felt that a man was making himself a journeyman for the purpose of coming in as a member.

Mr. Sugarman: I will ask the Examiner and the Board to take notice of this from its official records in the

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Printing Pressmen's cases I have cited.

There was a separate stipulation which I don't have here, an integral part of the total settlement, under which, with the help of the Board's attorney, Mr. Little, and later of the Board itself, the Printing Pressmen's Union took some five hundred men into the union; men who had been clamoring at its doors for membership, as a matter of fact.

That was not made part of what later became an official record of the Board and a decree for reasons which you might understand.

I will direct the attention of the Board to its own official records which will disclose this fact.

Mr. Richman: Mr. Sugarman, was this a stipulation to which Mr. Little put his signature?

Mr. Sugarman: I can only ask that you see the files of the Board and the correspondence with Mr.

Little, with Mr. Douds; and I and other counsel, including Howard Carter and counsel for the Printing Pressmen's Union sat long, long sessions over a period of years hammering this thing out in full detail. It is all disclosed in your files.

Mr. Richman: I object to any official notice taken of anything in the proceeding but the Board's decision and order, the settlement stipulation and the Circuit Court

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decree in this particular case.

It is my understanding that such a stipulation was not one to which a representative of the General Counsel's Office or of the Region was a party.

Trial Examiner: I don't think this is a matter on which I have to rule.

You are asking me to take judicial notice of certain things.

Mr. Sugarman: That's right.

Q. (By Mr. Sugarman) Does the Mailers' Union No. 6 receive from the Publishers' Association copies of the Publishers' contracts with the various other mechanical unions, at least? A. From the Publishers' Association?

Q. Yes. A. No.

Q. Where do you get these printed booklets such as you have here? A. From the other unions. We could get them from the Publishers. They could give them to us, or the union could give them to us.

Q. Do you have these booklets printed up yourself? A. Are you speaking of our contract?

Q. Yes, your contract. A. That is a joint action between the Publishers and

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ourselves. The same printer prints for both of us. He prints a certain amount and he distributes so many to them and so many to us.

Q. What about the Printing Pressmen's contract? Where do you get the booklet from?

You do have a collection of all the contracts currently in effect? A. Yes.

We could get them either from the Publishers or the Pressmen.

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Q. (By Mr. Sugarman) I show you this booklet and ask you what it is. A. This is the Pressmen's Union contract with the Publishers' Association.

Q. Do you recall where you got that particular contract booklet? A. I think this came from the Publishers; I think it did.

Q. Don't you generally get a batch of all the contracts

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in multicolored booklets after they have all been negotiated at about the same time as yours, and get them from the Publishers? A. I can't remember that, Mr. Sugarman. I can get any contract from any union from either the Publishers or the Union itself; I can get it from either one.

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Q. (By Mr. Sugarman) Mr. Smollon, do you remember in 1951 the use by your local union of a probationary membership classification? A. Yes.

Q. Did your union use that classification and make a number of probationary members in 1951? A. Yes.

Q. About how many were there, do you recall? A. Approximately 130; 125 to 130.

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Q. (By Mr. Sugarman) I show you Mailers' No. 6 Exhibit 12 for identification, purporting to be a carbon copy of a letter, and ask you what that represents. A. This is a letter that was sent out to—

Q. By whom? A. By myself.

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Q. As president of the union? A. Yes.

Q. To whom? A. This particular one to Harry Cousens, who at that time was superintendent of the mail room at the News.

Q. The Daily News? A. Yes.

Q. Was a similar letter sent to the superintendents or foremen of the various other newspapers of the Publishers? A. That's right.

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Q. (By Mr. Sugarman) I take it that you were requesting each mail room management representative to supply you with the list of extras in the order in which the management was doing the hiring of such extras? A. That's right.

Q. Was that in connection with the issuance of probationary

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cards? A. Yes.

Q. On what basis did you issue the probationary cards? What was the basis of the selection of the individuals? A. Maybe I don't understand you, so I will have to say that we asked these different superintendents or foremen of mail rooms to send us in a list of the men as they were

hiring them for extra work in the office. Then we would issue these probationary cards.

We, of course, told them at the time that these were the men who were shaping around or showing up regularly for employment in the offices. We only wanted those kind of men who were following the business. That is what we wanted.

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Q. (By Mr. Sugarman) I show you Mailers' No. 6 Exhibit 13 for identification, and ask you what that document is. A. This is a program for taking into membership.

Q. The probationers that we were talking of? A. Yes.

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Q. Is that the program that was actually followed? A. Yes.

Q. Were the probationers selected from the hiring lists based upon the qualifications set forth in that document, Exhibit 13? A. Yes.

Mr. Sugarman: I offer that in evidence.

Mr. Richman: Mr. Smollon, is this a letter or a communication to the membership of the union?

The Witness: This is a proposed membership program presented to the union.

Mr. Richman: To the union membership; is that right?

The Witness: To the union.

Mr. Richman: Was it adopted by the membership?

The Witness: Yes, it was adopted by the membership.

Mr. Richman: Did any employer receive a copy of this?

The Witness: Employer?

Mr. Richman: Yes.

The Witness: No.

Mr. Richman: Was it followed after its adoption?

The Witness: Yes.

Mr. Richman: I have no objection.

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Q. (By Mr. Sugarman) Was this probationary membership plan, and was the execution of it, the occasion for that four-page memo which is in evidence from William Mapel to the various publishers?

Mr. Richman: That is Exhibit 5, I believe.

The Witness: Give me the question again, please.

Mr. Sugarman: Read the question, please.

(Question read.)

A. Yes.

Q. That four-page memo was dated April 4th, 1951, and your letter to the various mail room management representatives was dated April 23rd, 1951.

So I take it you had your conference with Mr. Mapel as set out in the April 4th memo before proceeding to execute your plan? A. That's right.

Can I go into a little detail on it now?

Q. Yes, if you will. A. This was presented on, I believe, January 8th, 1951, and it was probably on the day of our union meeting. This was presented to the union membership—

Trial Examiner: By "this," you are referring to

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Mailers' Exhibit 13?

The Witness: Yes, I am.

That was brought to our union membership at the time, and that was passed at our union meeting.

This was not shown to the Publishers; they had nothing to do with the Publishers.

Then we went in before we proceeded with doing anything on taking in members at the time of this probationary set-up—we proceeded to have a meeting with the Publishers' group, with Mr. Mapel, at least, and the result of that was this communication.

Q. (By Mr. Sugarman) Of April 4th? A. Yes.

Trial Examiner: Referring to Mailers' Exhibit 5?

Mr. Sugarman: That's right.

The Witness: This one here, after that was sent to each individual superintendent or foreman—this happens to be the News—referring to our program and what we were referring to.

Q. (By Mr. Sugarman) So that in between the dates of April 4th, the date of your conference with Mr. Mapel, and April 23rd, when you communicated requesting the hiring list, you had some communication from Mr. Mapel or from the various Publishers? A. Yes.

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Q. Did they approve your plan insofar as Mr. Mapel had set it out in his memo? A. Yes.

Q. And then you proceeded to execute it? A. Right.

Q. You took in some 130 probationers? A. Around that.

Q. They at some future time were taken into full membership in the union, and full journeyman status; is that correct? A. Outside of a few who dropped out. All of them now are members of the organization; only those who dropped out are not. They have been for two or three years.

Q. About when were they taken in *en masse* in full membership? A. This probation group?

Q. Yes. A. To the best of my knowledge, I would say in 1953, the biggest part.

Q. When next did you take in a large group of members? A. In 1956, I think.

Q. In 1954, when you and Frank O'Hara and I had our series of conferences with the Publishers' representatives on hiring practices, that was not in contemplation of taking in any large group at that time; is that correct?

A. No.

Q. In 1956 you took some 125 members in; is that correct? A. Just 125.

Q. Did you take them into membership on some basis materially different from the basis set out in Mailers' Exhibit 13?

Mr. Richman: Objection. I would like to know the basis that they were taken in on.

Trial Examiner: I will sustain the objection to the form of the question.

Q. (By Mr. Sugarman) Do you recall the basis now on which you took your members in in 1956? A. We took the basis as we did back from our conversations on that three or better—work three shifts a week or better.

Q. Was that on the basis of the vacation credits that you have already testified to? A. Well, what it was, we took it on the basis of a man who worked three shifts or better, he averaged three shifts or better a week. The vacation—and what we did then to take them in to find out whether they actually worked the three shifts a week, we had to get some way of what was the average of three.

We took the basis if they had nineteen vacation days in a year, that would give them that average of three or better. If they had better than nineteen, so much the better.

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We had some that were practically steady journeymen that were working four or five days a week. They would naturally have more vacation days. But it was based on nineteen at the start.

Q. Then you didn't apply the nineteen later on? A. We couldn't, because we wanted to take in 125.

Q. I don't want to go back over all that. I think you have testified to that and we have already put in evidence the documents at the News showing the vacation credits? A. Yes.

Q. Were similar documents, by the way, provided by all of the Publisher offices showing the vacation credits and work records of all their employees? A. Every office where we were taking in, where there were journeymen around who hadn't gotten their cards.

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Q. (By Mr. Sugarman) Is it a fact, however, that the privilege of membership was extended only to those employees who by reason of their established word record had proven themselves the equivalent by experience and competency of journeymen?

Mr. Richman: Objection.

Trial Examiner: We have already had testimony to that effect. I will let you answer.

A. Yes.

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Q. * * * Have you, as the president of the union, and has the union, officially ever entered into any arrangement or understanding or agreement with the Publishers, or maintained with the Publishers a practice under which only union members are to be hired and continued in employment? A. No.

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Q. (By Mr. Sugarman) Or under which union members are to be preferred over non-union members in hiring or in tenure or the opportunities of employment? A. No.

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Q. (By Mr. Sugarman) Have you ever asked or demanded of the Publishers that they hire or prefer union members? A. No.

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Q. (By Mr. Van Arkel) Mr. Smollon, you testified that over these years quite a number of apprentices and others have become members of New York Mailers' Union No. 6? A. Yes.

Q. In each case, did each of those persons join the union voluntarily? A. Yes.

Q. Was any pressure put on them to get them to join? A. No.

Q. Has it been your general experience that those who are eligible to union membership usually take membership in the organization?

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Q. (By Mr. Van Arkel) Mr. Smollon, are there, to your knowledge, in the City of New York any substantial

number of qualified, competent mailers who are not members of Mailers' Union No. 6?

Mr. Richman: Objection.

Trial Examiner: To your knowledge; to the extent that you know or don't know.

A. No.

Q. You say you do know, and your answer is that there are not? A. There are not, that is correct.

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Q. Does the term "journeyman" as used in the agreement, the current and the preceding agreements since 1947 between New York Mailers' Union No. 6 and the Publishers' Association of New York City, have any reference to membership or non-membership in New York Mailers' Union or in the International Typographical Union? A. No.

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Q. (By Mr. Sugarman) It is provided in Section 17 of your collective bargaining agreement that the foreman shall create a sufficient number of regular situations to meet the

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minimum requirements of the office.

How is this done by the foreman? How is it calculated? A. To make a minimum force is what it means. The foreman puts on so many men every night in the week, and when you make a total of how many shifts are worked a week, you divide by five and you get your minimum amount of situations that are needed to cover his minimum force.

Q. Does the foreman decide, for example, how many men he normally needs on a Sunday night? A. Yes.

Q. Incidentally, when we talk of nights, the same would be so on the day shifts? A. Yes. I should say shifts.

Q. Yes.

Let's talk about a paper like the News, which has night shifts. He decides how many men at a minimum he needs normally for a Sunday night; is that right? A. That's right.

Q. Shall we just assume fifty for Sunday night? A. All right.

Q. He decides how many he needs for Monday night, and that might be a figure—you pick it. A. Sixty.

Q. And for Tuesday night? A. Seventy.

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Q. Wednesday night? A. Seventy again.

Q. Thursday night? A. Eighty.

Q. Friday night? A. 120.

Q. And Saturday night? A. Two hundred.

Q. Now, that is the seven nights.

You say you total all of these? A. Yes.

Q. The total would be 650.

Then you say you divide the 650 by five? A. Yes.

Q. For what reason? A. To get a minimum regular number of situations, which would give you 130.

Q. Is it because five shifts— A. Five shifts constitute a week's work.

Q. So that the minimum crew in terms of regular situation holders at the News on these hypothetical figures would be 130 men? A. 130 men, that's right.

Q. If, in the course of his experience, the foreman finds that he has to reshuffle these figures and he needs more men

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normally for a particular night, he may from time to time

change his minimum crew and add or subtract regular situation holders? A. That's right.

Q. If he decreases his force on a permanent basis by cutting down on the number of regular situation holders, then with a week's notice he may knock off the junior on the priority list of the so-called regular situation holders? A. The last man made, yes.

Q. Then the substitutes range below the regular situation holders as the number of regular situation holders may fluctuate from time to time? A. That's right.

Q. And as new regular situations are created by the foreman, the man at the top of this regular substitutes list is upgraded to regular situation holder; is that right? A. That's right.

Q. Then he would be the first down in a decreasing term? A. Yes.

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CROSS EXAMINATION:

Q. (By Mr. Richman) * * *

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Q. Aren't the apprentices required to take the I. T. U.

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courses in unionism? A. That would be after they become registered apprentices.

Q. There is no provision in your contract for them to take this I. T. U. course in unionism, is there? A. No, not under the contract.

Q. So, therefore, you would say that that is one provision of the general laws that governs the apprenticeship relationship; am I correct in that? A. They would have to take the lessons in unionism.

Q. That applies to all apprentices? A. After they become registered apprentices in the I. T. U.

Q. How do they become registered apprentices? A. After they are in a year, the foreman appoints them as apprentices, and after they serve a year then their name is submitted to the union if they are satisfactory to the foreman, and then they become registered apprentices in the I. T. U.

Q. Is it your experience that all apprentices become registered with the I. T. U.? A. No.

Q. Are there any apprentices who have not been registered with the I. T. U.?

I am talking about Mailer apprentices now, only. A. I don't know just how you mean the question.

If they finish an apprenticeship program, they would ordinarily be registered with the I. T. U.

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Q. Let's start from the beginning.

Who appoints the apprentices? A. The foreman.

Q. When the person is appointed by the foreman, is he an apprentice? A. He is an apprentice for the first year. He is an appointed apprentice for the first year.

Q. Is it your experience that all of these people who went through their first year became registered apprentices with the I. T. U.? A. No.

Q. Are there some who continued as apprentices who did not register with the I. T. U.? A. Yes.

Q. What happened to them? A. We upgraded them. We kept them on our own books as apprentices, and with the consent of the employer we upgraded them into membership.

Q. They became members? A. That's right.

Q. Is there any reason for their not being registered with the I. T. U. as apprentices? A. The only thing I can say to that is that these past few years, with the boys being inducted into the Service, and all such things, we did hold back the registration because we

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wanted to move them.

Q. In other words, if you had registered them with the I. T. U., you would have been required to follow the time-table set out in the I. T. U. general laws? A. At one time, but not now. We can now register as we are doing now. We are registering them again now after the year is up. Now, in an emergency, we can upgrade them in a faster time.

Q. Let me ask you this— A. That is always with the consent of the employer.

Q. Would it be correct to say that all apprentices who went through their first year eventually became journeymen? A. No.

Q. That's not right either? A. No. Some quit, and some the foreman won't advance past a year.

Q. But all those who did advance past the year—I am talking about those who advanced past the first year. A. Yes, they would become—

Q. They all became— A. Unless they quit. We can't make them come in.

Q. I understand that.

My question is this: All those who went past their first year, is it a fact that they all became members of the Mailers' Union?

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A. When you say "past their first year," if it was a month past their first year, no; if it was a year past their first year, it is possible; if it is two or three years, practically yes, they do.

Trial Examiner: Eventually all those who went past the first year eventually became members?

The Witness: If they stay and if they want to become members.

Q. (By Mr. Richman) Isn't it a fact that working cards are required from all apprentices who have gone past their first year and have started their second year? A. Working cards?

Q. Yes. A. Working cards—I just don't know what you mean by "working cards."

Q. Did you ever hear the term "apprentice working card"? A. We have an apprentice card.

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Q. Yes. A. They have an apprentice card, yes.

Q. Who issues those cards? A. The union.

Q. Are there any apprentices without these apprentice cards? A. For the first year.

Q. I mean after the first year? A. If we haven't registered them, then they don't have an apprentice card.

Q. The reason you haven't registered them is that you seek to accelerate their training? A. That's right.

Q. So, therefore, they won't get apprentice cards? A. That's right.

Q. But if they are following the normal course of apprenticeship, then they do get apprentice cards? A. That's right; after one year.

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Q. (By Mr. Richman) Suppose an apprentice who has finished his first year and is starting his second year does not get an apprentice working card.

Can he continue to be an apprentice? A. We have continued them on as an apprentice.

Q. Have there been such cases? A. Yes.

Q. How many such cases do you remember? A. I don't know.

Q. Has there been more than one? A. Yes.

Q. What has happened to these individuals? A. If they stayed and remained as apprentices, eventually they became members of the union.

Q. Do you know for a fact whether these apprentices who did not get working cards did become members of the union? A. Do I know if they did become members?

Q. Yes. A. Yes.

Q. Are you answering in this way because you are thinking

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of those apprentices who were not registered? A. I don't understand your question.

Q. You have told me about two types of apprentices who are going into their second year. The first type of apprentice is the one who you mean to go through the usual course of about six years.

Then you have told me about a second type of apprentice who is not registered and who you mean to accelerate. A. When you say who I mean to accelerate, I was talking about—when I am talking about an apprentice who is not registered, there wouldn't be any apprentices now who wouldn't be registered after their first year.

The reason that we had to go through a thing like that

was on account of the draft or other such things. That is why we were working that way with apprentices.

Then we usually, if they had two years, they became twenty-one, or maybe go six months after that, according to the time we were then moving our membership, we moved those boys in because they practically then were journeymen under your terms and the way we looked at it. They were working five days a week and they had learned a lot about the business.

Q. Take the case of an apprentice who has finished his first year, and he is scheduled to go through five more years. Have there been cases where such an individual did not get a working card?

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A. Do you mean a journeyman's card?

Q. No; an apprentice's card. A. If he had been registered with the International? Is that what you are asking me?

Q. Let's take the case of a man like that who had been registered. A. He would get a working card for an apprentice.

Q. Have there been apprentices who have finished their first year and were scheduled to go through five more years who were not registered? A. No, there wouldn't be.

Q. Why wouldn't there be? A. The premise is that they would be scheduled to go through the next five years all right, but then in the meantime maybe we would be taking in a group of men as journeymen who had become qualified as journeymen. Then we feel the apprentice then who has two years in, or maybe three years in, and maybe four years it could be—we would feel that then he had become qualified as a journeyman too, and we would take him in with the other group we were taking in.

Q. Even though he hasn't finished his six years? A. Yes.

Q. Who makes that decision that you should take them in? A. Usually when we are making a move toward membership like that in a group, when we are taking in quite a few, then

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we provide for that at that time.

Q. It is the union that makes the decision, isn't it? A. The union; but with the consent of the employer where apprentices are concerned. If we upgrade an apprentice at any time, whether he is a registered apprentice or not, we cannot upgrade them unless the employer consents to it.

Q. How do you get his consent?

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The Witness: I call the circulation director usually. He is the one that we do most of our business with in the Mailers.

I call him up and tell him that John Jones is an apprentice in the shop; he has been there three years or he has been there four years. We are moving up a new group, and we want to include this boy in with that group. He now has become competent to do the work, and we feel he should have a journeyman's status.

I have never been turned down yet.

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Q. (By Mr. Richman) You say this has happened even though an apprentice may have finished only his fourth year of work? A. It has happened when he has only finished three.

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Q. There were times when you did call up various management officials at the time when you were taking in groups of members, and tell them that so-and-so was an apprentice, and the union considers him competent and wants to take him in as a member now? A. That's right.

Q. This occurred even though the apprentice still may have had one, two or even three years more to go on his apprenticeship? A. That's right.

Q. Isn't it a fact that prior to making that call to this particular circulation manager that you spoke about to Mr. Libbin, you did not actually give this apprentice you are referring to a test? A. Yes, he got a test. It was the same test as all the other ones who would be getting their union cards at that time.

Q. Who gave this test? A. Our membership committee and the foreman. The foreman is always asked on these things. I wouldn't recommend or ask—at least, I wouldn't ask a circulation director to upgrade an apprentice unless I had the approval of the foreman.

Q. I think I asked you this question before:

Are these tests given by your membership committee and

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the foreman to any other individuals who may be working in the mail rooms who are not candidates for membership? A. No.

Q. If a person asks to have such a test given to him, would he get that test? A. If somebody we weren't—

Q. Thinking of taking into membership, yes. A. I have to answer it this way:

When we take in membership like that, any man who has come to the point where he qualifies as a journeyman is

given an application for membership in the union. There would be no reason to give anybody else an application.

Q. In your experience, no one has asked? A. I have never known anybody to ask.

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Q. I notice also that your program, which is Mailers' Exhibit 8, does not specifically provide for the selection of apprentices? A. No, it doesn't.

Q. Is that because it is up to the foreman of each shop? A. He appoints the apprentices.

Q. It is entirely up to him? A. Yes. He appointed them and he gets them working for a year. Then they would be given registration in the I. T. U.

Q. To whom do people make application for an apprentice position? A. Yes; we have—

Q. I say, to whom? A. They will come to us and they will ask for apprentice slips, and they will go to the Publishers, too, and ask for apprentice slips.

Trial Examiner: Is there an apprentice card to fill out?

The Witness: Yes, after he becomes a registered apprentice.

Trial Examiner: Before that?

The Witness: No, not for the first year.

Let me correct something there with this committee

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that we have now.

Names can go before them, yes, for apprentice slips, before that committee.

Trial Examiner: Let's say that a foreman appoints an individual as an apprentice.

When is the first step that the union comes into the picture with respect to him?

The Witness: With this committee here.

Now the foreman will appoint an apprentice for the first year, but he will appoint them now after this committee passes on them. I should have said that before.

Trial Examiner: What committee are you referring to?

The Witness: A Joint Apprenticeship Committee.

Mr. Richman: That committee is listed on the first page of Mailers' Exhibit 8.

The Witness: It used to be the foreman. The foreman, they would tell him and he would tell them.

Q. (By Mr. Richman) Is it your testimony that the foreman had the sole authority before this system was set up in June? A. The foreman used to appoint them, yes, and then, after a year, he would pass on them.

Q. Now it is this Apprenticeship Committee that appoints? A. They go before them.

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Q. Did the union ever object to the foreman's method of handling appointments or advancements? A. No.

Q. Didn't, in fact, all of the apprentices appointed by the foremen become subject to the approval of the union? Let me rephrase the question.

Didn't the union approve all the appointments of apprentices by the foremen? A. No. The first year when they come for registration with the I. T. U., they would be registered with the I. T. U. If there is anything against them there, or any reason for not getting the registration,

then I think we would certainly have something to say about it.

Maybe he is an undesirable, you know. There the foreman again passes on his desirability.

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Q. (By Mr. Richman) As I understand it, Mr. Smollon, no apprentice is registered until after he goes through his first year? A. That's right.

Q. I am talking about when an apprentice first starts to work at the beginning of his first year.

Didn't Mailers' Union No. 6 approve all of those people who were started off on their apprenticeship? A. What happens there when they are appointed as an apprentice: The foreman then sends his name down to the union, that he has appointed a new apprentice.

Q. Yes? A. And that's it.

Q. He just sends the name down? A. He just puts on file that John Jones is an apprentice at the Daily News office.

Q. Why does he send it down to the union? A. Because it starts his first year as an apprentice. When he registered after the first year, he has to put in five years more.

Q. Isn't it a requirement that the foreman send you such a notification? A. Sure.

Q. Doesn't he send you such a notification because if you

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have any complaints or kicks about the appointment, you would have the opportunity to raise such complaint? A. No.

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Q. (By Mr. Richman) Are you familiar with the provision of Article 1, Section 4 of the general laws, which states in its first sentence: "All persons before entering the trade as apprentices shall first be approved by the local union"? A. Yes.

Q. Do you follow that? A. If the foreman appoints the apprentice, he sends us down the name and we just register it. That is all we do.

Q. In other words, that constitutes your approval? A. That is our approval.

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Q. He registers it with the local, and he does so because the general laws require him to do that; is that right? A. That's right.

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Q. (By Mr. Richman) Could you just hold this exhibit in your hand, please? This is Millers' Exhibit No. 9. A. Yes.

Q. In the column headed "Date Obligated as Journeyman," you have a series of dates for the individual? A. That's right.

Q. Those are the dates, are they not, that these people were inducted as members into the union; is that right?

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A. Yes.

Q. And as "Journeyman Register Number," the next column on the right is the number of the I. T. U. card held by each of these individuals? A. The registration number with the I. T. U.

Q. That is their membership card number; is that right? A. We put that on his local card, the registration number. That is his registration number with the I. T. U.

Q. Could you look down on the first page, about the middle, to a fellow named Bernard Curtis? A. All right.

Q. He started his apprenticeship on December 15th, 1946, and he became obligated as a journeyman, as you have it, on December 8th, 1947.

The way I read it, he served an apprenticeship of less than a year. A. One week less.

Q. How did he make it? A. I will tell you how he made it. That would slip my memory back as far as 1946 and 1947, but I will tell you how he made it.

He made it because we were desperately in need of men to cover our situation. That is how he made it and that is how somebody else could make it in a case like that.

Q. You like all the regular situations covered with members;

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is that correct? A. We like all situations covered, members or not members.

Q. You would like it covered by members? A. Of course. I am president of the union.

Q. There is a fellow—I don't know what page he is on your copy—named Edward Kissel. He is about in the middle of the page also. A. I have it.

Q. He began his apprenticeship September 10th, 1946, and he became obligated as a journeyman on March 8th, 1948. That is about a year and-a-half? A. That's right.

Q. Is he in the same boat as Curtis? A. Yes, the same thing.

Q. You needed coverage desperately, so you took him in? A. The same thing.

Q. I take it the same applies to John V. Nagle, on page three.

He served about a year and-a-half? A. That's right.

Q. And also Lawrence Schlattter, on page three—he served about a year and-a-quarter according to my statement? A. That's right.

Q. And Thomas J. Ward, who also served about a year and-a-half; is that right?

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A. Yes.

* * *

Q. (By Mr. Richman) All of those people we have named were taken in under the same circumstances as Curtis? A. That's right.

Q. I believe in answer to Mr. Sugarman's questions you said that in any case the management of a particular paper could make an apprentice put in his full time as an apprentice? A. Yes.

Q. Has that ever happened? A. Yes.

Q. In other words, the management has objected to your making a man— A. Oh, no, I don't remember that.

Q. You don't remember anything like that? A. No, I don't.

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Q. Have you ever told your membership that a particular provision, giving it a number, for instance, should not be followed because it is contrary to law? A. I have said at our meetings many, many times to our membership, and I have called their attention to the Taft-Hartley Act and what it entails as far as this union is concerned. I told them that we must live up to the law of the land.

Q. You told them generally that they must live up to the law of the land? A. Yes.

Q. Have you told them specifically which of these provisions of the constitution and by-laws— A. Mr. Richman, I haven't held a class on it, or anything like that.

Q. Your answer is no? A. That's right.

Q. Isn't it a fact that in mail rooms throughout the city, a person who is not a member of the union cannot be put on a

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mailing machine to learn its operation? A. No, that is not a fact.

Q. Do you know of instances where people who are not members of the union have been put on mailing machines? A. Sure.

Q. Where? A. On certain type machines, feeding boxes and things like that on automatic mailing machines, inserting machines.

Q. Are they considered operators of the machines? A. No.

Q. They just do— A. They feed boxes.

Q. But they are not operators? A. No.

Well, they could be if they were put on those machines in an operator's spot.

Q. Do you know of any who have been put on operator spots? A. Now that you ask me a pointed question, no, I don't. I would have to be in the shop to know that, and I am not in the shop.

Q. Isn't it correct to say, as far as you know, that all the operators of mailing machines are members of the union? A. I would say that practically all of them would be the truth.

Q. All of them?

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A. That would be the truth because of their experience.

Mr. Richman: I move to strike the last part of the witness' answer as non-responsive.

Mr. Sugarman: He was asked for the operation of his mind; he wasn't asked for a statement of fact.

Trial Examiner: He was asked if that was a fact, that practically all operators were members of the union. He wasn't asked why what was the situation.

Mr. Sugarman: May we have the question read? I don't think he was asked whether it was a fact.

Trial Examiner: Let me say that if I grant your motion to strike, Mr. Sugarman will undoubtedly ask him to explain why, and it will come in then, so I will let the answer stand. It will save time.

Q. (By Mr. Richman) Is it a fact that all members of the I. T. U. receive copies of the book of laws each year? A. No, not to my knowledge.

Q. Does your local union make any provision for distribution of these books of laws to the members? A. The I. T. U. laws?

Q. Yes. A. We get a certain amount of them sent to us each year, and we keep them in the office. Anybody that wants a copy can come in and get one.

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Q. Isn't it a fact that the operation of the priority system is not subject to arbitration, as far as you know? A. Yes.

Q. It is subject to arbitration? A. It is not.

Q. It is not subject to arbitration? A. That's right.

Q. That is because the union considers that the opera-

tion of the priority system is the sole responsibility and function of the union? A. That's right.

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Q. (By Mr. Richman) Could you just read into the record this portion of the obligation that I have marked with pencil? A. "That I will at all times support the laws, regulations and decisions of the International Typographical Union, and will carefully avoid giving aid or succor to its enemies, and will use all honorable means within my power to procure employment for members of the International Typographical Union in preference to others."

Q. To the best of your knowledge, this was the obligation of members as it existed in the constitution effective January 1st, 1951; is that right? A. That's right.

Q. Did you ever receive any notification from the I. T. U., or any of its officials or officers, that the word "members" when it is used in the general laws, should be taken to mean "journeymen"? A. The word "members" in all our contracts was changed to "journeymen."

Q. My question to you is this:

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Were you ever notified by the I. T. U. that the word "members", when used in the general laws, should be taken to mean "journeymen"? A. I don't remember.

Q. You never remember having received such notification? A. No.

Q. Am I correct in saying that the union desires to create as many regular situations as possible? A. Yes.

Q. To that end, you have put in the provision in Section 18 of your contract to the effect that: "A man who shall have worked in any shop five days or five nights a

week for ten consecutive weeks, providing he is not substituting for an absent regular, shall be deemed a regular situation holder."

Isn't that the purpose of this section of your contract? A. That's right.

Q. There have been cases—and contradict me if I am wrong—where foremen have not made as many regular situations as the work force warranted; in your opinion, that is? A. When we feel that more regular situations should be made where men have put the time in, we would talk to them about it. We haven't had too much of that. They usually make as many situations as they need—the foreman will.

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Q. Thank you.

In 1956, when you took in this group of approximately 125 people, your purpose in taking in new members was to cover

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as much of the work with your members— A. Our purpose was this: Those boys and those young men who were working in those shops had become, in our opinion, journeymen in the shops. They were working better than three shifts a week, most of them were.

We felt that due to the conditions in the places, they needed extra help, and we wanted to get men who would go in and improve their position, have more continuous service; go in five nights a week, work five nights a week.

If we brought them in, they would even then try to become more steady in their work. That was the answer, and that was the reason we were taking them in. They were journeymen and we made them members of the union.

In other words, if a man is working in a shop, he is getting enough work that we feel that he should be a member of the union; his job brings him into the union. We don't make membership in the union the reason for the job. We make the job the reason for membership in the union. That is what we do every time we take in members.

Q. Wasn't it a fact, with respect to the Daily News, that the thirty-one people you took in there were already working in a regular order as non-union extras? A. Working in a regular order?

Q. Yes. They were being hired in the regular order as non-union extras?

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A. As I understand from the testimony here, he had a regular list, the foreman did, that he used to put those fellows on in a regular order.

Q. With respect to the conditions in the mail room, or the benefit to the employer, how does your taking these people into membership assure the employer of any more competent help or any help who would work more days a week than they have already been working? A. It is an actual thing. Those boys were trying to make this business their livelihood. They wanted to work in this business. When they want to work in this business and they show up and they get enough work in the shop, we are very happy to have them in the union.

Nobody ever dragged them in to the union. They were very happy to come in, and we were happy to have them, and that is the answer.

Q. When they received their cards and they were put on as regular substitutes at the News—. A. They went on the union priority list.

Q. However, they went to work in the same order as

regular substitutes as they did when they were on this non-union hiring list; isn't that correct? A. That's right. They hit the bottom of the union priority list.

Q. With the exception of perhaps Mr. Randall and several

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others who were not made members? A. With the exception of a man like Randall who only shapes two nights a week, or shows two nights a week for work. We have always made it a practice that a man who shapes up or who shows up two nights a week is just a casual as far as we are concerned, and that includes our own member who only shapes two nights a week.

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Q. (By Mr. Richman) Briefly, you felt that seventy-five new members was not enough; is that correct? A. Yes, when we got into the thing. It wasn't the seventy-five; we were looking to take in 125.

Q. How did you determine to take in 125?

What, in the operations of the mailing rooms, made you decide on 125? A. Let me try to explain that to you.

When we are moving towards taking in a group of members like that, as I think I said on the stand here the last time I was on, our books are never closed; we are taking in new members at all times; maybe one or two a month, three

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a month, five a month, according to what—maybe we organize a shop, or whatever it is, we are taking in new members.

When we make a move towards taking in more of a group,

a larger group, that goes over a period of months that we are surveying the thing, we are looking it over, and we are watching to see what is going on in the different shops. So when we went into this 125, that was just a figure we pegged, that we would take in about 125.

Then when we made our plans to find out who should come in according to their seniority and according to their journeyman status, why, we found out then that under the system of vacations that we were picking up, it wouldn't give us the 125; it would give us about seventy-five.

But in the News, we found out that from around after Christmas holidays were over, when the paper started to get heavy again, we were then finding many fellows who were getting three and four days a week from then on up until the time we were giving out these applications.

That had a bearing on it. We got between going back to a fifteen-day vacation-set-up instead of nineteen which we had taken in the first place, going back to there, and then them getting this extra work between the first of the year and the time we were taking in the members, which was in June—that was nearly five months.

We then decided, well, we can get them out of the

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News or out of the Times, wherever we were going with them for that time.

Then we don't always stick strictly to a three-day-a-week thing. If we have a particular shop where we are short men, and they can't get any men, and these men are working continually in there, maybe within a year's time they may be working three or four or five shifts a week and be taken in.

Q. Isn't the reason this, or isn't one of the important reasons this:

You felt that the work in the various mail rooms was heavy enough so that you wanted to cover this added amount of work with your members? A. We always wanted to get new members in the union, if that is your question.

Q. No; my question is this:

Didn't you want to cover this additional amount of work in the mail rooms with your members? A. We would always like to cover with our members if we can, certainly.

Q. And by giving these people cards, you can cover them with your members; isn't that a fact? A. We can up to the extent where they have the cards. Up to that group, we can; and then, when we can't, the employer covers with men wherever he can get them from.

Q. I think you told Mr. Sugarman that individuals are

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happy to take membership in your union usually, or in all cases? A. That's right.

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Q. (By Mr. Richman) Were any of these thirty-one given an examination by examiners selected by the paper and by the union? A. Yes.

Q. Who were these people? A. The membership committee of the union, and the foreman of the shop.

Q. Was the foreman selected by the paper? A. By the publisher.

Q. And all of these thirty-one were tested by the membership committee and by the foreman? A. That is correct.

Q. And no other people were tested?

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A. No.

Q. Could you look at Section 20(b) of the current contract, the last two sentences on page fourteen.

Does there exist in writing any standard or procedure which the papers and the union have established? A. In writing?

Q. Yes. A. No.

Q. Do you consider the examination by the foreman and by the membership committee as falling under this provision in Section 20(b)? A. I do.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Sugarman) • • •

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Q. The several people whose names were mentioned by Mr. Richman, like Bernard Curtis, who served something less than two years—is that correct? A. Yes.

Q. As did Kissel and Nagle, Schlatter and Ward? A. Yes.

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Q. Those people all started their apprenticeships in 1946: is that right? A. Yes.

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Q. (By Mr. Sugarman) Was there a particular emergency situation in 1946? A. Yes.

Q. What was that situation? A. The war had just ended, and the papers were getting heavier, and we needed journeymen to do the work.

Q. You were satisfied that these men had already achieved the proper journeyman training? A. Yes.

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Q. (By Mr. Sugarman) Mr. Smollon, when Mr. Richman examined you last, you had no recollection of any case in which the priority system was arbitrated; is that correct? A. That's right; none that I can remember.

Q. None that you could remember.

Try this: Do you know Vincent Hauser? A. Yes.

Q. Within the past two years, year and-a-half, did we not arbitrate, before a five-man board, shared by George J. Mintzer, a grievance involving Vincent Hauser? A. Yes, that's right.

Q. Wasn't the question in that arbitration precisely whether or not Vincent Hauser had retained his priority as a regular situation holder in the Journal of Commerce? A. Yes, that's right.

Q. It was decided by a majority vote of the Board of Arbitration that he had not retained it? A. He lost his priority.

Q. You and Mr. O'Hara, as members of the board, dissenting? A. That's right.

Q. That was a priority in accordance with the priority system of the union, and as reflected on a priority list

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maintained in the Journal of Commerce mail room? A. That's right.

Q. You were asked about Article 4 of your local union by-laws; that is, the priority system. You were asked whether that was not the sole function and concern of the union.

Do you recall that? A. Yes.

Q. Is the priority system as carried over from your by-laws into the mail room, and as reflected in the priority list, an operating system by which the foreman is guided

in the placement of his regular situation holders and his regular substitutes? A. Yes.

Q. So that it has a double function: it has one for the foreman, and one as among the union members relative to their own status? A. Yes, that's right.

Q. Does Article 4 of your by-laws, in terms or in the manner of its application in any case you know of, relate whatever to the priority system applicable to non-members of the union? A. No.

Q. Has it any application to the priority system which may be applicable to the total employee roster in the mail-room?

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A. No.

Q. But only as to the union members? A. That is all.

Q. This document, Intervenor's Exhibit 9, of April 1st, 1951, you recall in a general way having received and seen and studied it? A. Yes.

Q. I direct your attention to page four thereof in italics, this direction:

"Officers of subordinate unions are directed to require each and every member of each scale committee to read the above decision of the executive council."

Trial Examiner: On what page?

Mr. Sugarman: On page four.

The Witness: Yes, I see it.

Q. (By Mr. Sugarman) Does that stir your recollection at all as to whether this was received at your local office in quantity for distribution? A. Yes. I suppose that we had more than one copy of it. I don't know just how many we got, or anything like that. This goes back to 1951, and I just don't remember how many we got, or anything like that.

This was certainly, as I said earlier, used in our discussions at any time we had scale committee meetings and when we are going into negotiate scales. We use this and

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other things, too. I think the question was asked of me if everybody in the union got it, and I don't think they did.

Q. You didn't recall whether there was more than one copy. You didn't remember anything about it. A. I am not too sure how many there were. That was in 1951.

Q. Do you recall whether the contents of this, or any part of the contents of this document, were discussed at any union membership meeting? A. Yes, I think this was called to the attention of the membership. We did discuss this.

Q. As a matter of fact, on April 9th of 1951, did you not have a membership meeting at which this document was at least referred to in connection with the Taft-Hartley Law? A. Yes.

Q. Do you recall at your membership meeting, if you want your best guess—my name being introduced in the discussions? A. Yes, your name has been introduced in the discussions.

Q. Wasn't it at about this time that you were discussing with Mr. Mapel the whole program of probationary membership, and the other things taken up in that four-page memo, Mailers' Exhibit No. 5? A. Yes.

Can I say something here?

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Q. Yes. A. As far as these communications that we get from the International Union are concerned, we have many, many communications coming from the International Union that I read out at our meetings.

I read them out the way we are instructed to read them at the meetings. This is probably one of these that we probably read. Maybe we got a letter to read this at the meeting, and we did.

Q. Would a book of all this size be read out? A. Sure; we go into long stuff.

Q. Do you remember whether this was actually read in full? A. No, I don't.

Q. But it was referred to in your April 9th meeting? A. Yes; I am positive it was.

Q. You were also asked whether it wasn't really true that over the years, except for a few changes in working conditions provided for, the contracts with the Publishers' Association have remained substantially unchanged?

Do you recall Mr. Richman asking you that? A. Yes; I do.

Q. Do you remember this little thing (indicating document)? A. Yes. That is a very old one.

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Q. (By Mr. Sugarman) What is Mailers' Exhibit 14 for identification? A. This is a contract between Mailers' Union No. 6 and the Publishers' Association of New York City. It went into effect April 16th, 1924, and expired July 1st, 1926.

Q. Does your office have available any contracts earlier than that? A. I think that is about the earliest one we have.

Q. Every year or two subsequent to 1924, a renewal and an extension agreement was entered into in replacement of that one which expired? A. That's right.

Q. This document consists of six pages altogether? A. Yes.

Q. And your present contract, of course, is much larger, with some twenty-seven pages? A. Yes.

Q. In addition to changes in wage scales and hours, and changes in conformity with the enactment of the Fair Labor Standards Act of 1938, and changes perhaps in conformity with Wage Stabilization Regulations at the time of their

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applicability, in addition to those things, has there been a general enlargement of the area of bargaining over the years? A. Yes.

Q. As a result of such broadened bargaining, have your contracts expanded in the detail of their coverage? A. There haven't been many changes, but I would have to look back at them.

Q. Without going into them in any detail, do you recall a day when your contracts used to provide for a closed shop? A. Yes.

Q. That was so right up until the time of the enactment of Taft-Hartley; is that not correct? A. That's right.

Q. Then, in your first contract, at least, after the effective date of Taft-Hartley, your contract which became effective from 1948 to 1950, wasn't the closed shop provision entirely eliminated? A. Yes.

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Q. (By Mr. Sugarman) I show you Mailers' Exhibit 15 for identification, and ask you what that is. A. An agreement between the Publishers' Association of New York City and the Mailers' Union No. 6, effective June 1st, 1948, and expiring May 31st, 1950.

Q. When was this agreement finally negotiated, do you know? A. When did we finish negotiations?

Q. Yes. A. Was that in May?

Q. It was effective June 1st, 1948. A. I think the negotiations finished about June 1st that year.

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Q. About June 1st? A. Yes. It may have been a little while later than that. I think the previous contract expired May 6th. We went past the date and came out with June 1st.

Q. Are you sure this was not concluded some time subsequently to the effective date of the Taft-Hartley Law? A. I couldn't be sure.

Trial Examiner: The only contracts which are being attacked are those in existence on December 26th, 1955 and thereafter.

Mr. Sugarman: There seems to have been a suggestion in Mr. Richman's line of inquiry of Mr. Smollon that but for some little word changes, and a few changes in scales, and maybe in hours, everything is as it once was before Taft-Hartley, and that the contracts have really been unchanged.

I want to show that the contracts have been very, very substantially, in all respects here material, changed.

Mr. Richman: In order to try and save further questioning on this line, my question pertained only to the past few contracts, and that centered around the 1951 date of Intervenor's Exhibit 9.

I did not intend any reference to pre-Taft-Hartley contracts, or the one immediately thereafter.

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Mr. Sugarman: All right. I won't pursue it any further in that case.

That is all I have.

Mr. Van Arkel: I have a few questions.

Q. (By Mr. Van Arkel) Mr. Smollon, when apprentices at the end of their first year make application for membership in the International Typographical Union, do they fill out some kind of application form? A. Yes. They fill out an apprenticeship application form.

Q. What does that form contain? A. Mr. Van Arkel, I am not sure, because the secretary-treasurer fills that out with them.

Q. You do know that they fill out such a form? A. Yes.

Q. Is that form then transmitted to Indianapolis? A. It is.

Q. Along with the request that he be entered as an apprentice on the rolls of the I. T. U.? A. That's right.

Q. Do apprentices pay any dues to the I. T. U.? A. Yes; but I just don't know the amount. They pay the per capita tax, and I think a half-dollar more.

Q. Do any of the agreements that you are familiar with of the I. T. U. provide for dues check-off?

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A. Of us?

Q. Yes; of union dues? A. Of any I. T. U. union dues?

Q. Yes. A. I think the Typographical does that; I am not sure.

Q. Let me ask you this:

Who collects the dues? A. The chairman collects the dues.

Q. The chapel chairman? A. Yes.

Q. Does he collect the dues from the apprentices as well? A. Yes.

Q. There is no system by which the employer automatically deducts dues? A. Not for us.

Q. I take it from what you have said that the apprentices pay their dues to the chapel chairman in the same fashion the journeymen do? A. Right.

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RE-CROSS EXAMINATION:

Q. (By Mr. Richman) To your knowledge, all the apprentices

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that are presently in the mail rooms, or were in the mail rooms for the past several years have paid these dues? A. Those who have—

Q. All apprentices who have been working in the mail rooms for the past several years have paid these dues?. A. All registered apprentices have.

Q. What about an unregistered apprentice? A. No, they have not paid any dues.

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HARRY S. DUFFY, called as a witness by and on behalf of the Intervenor, and having been first duly sworn, was examined and testified as follows:

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Direct Examination:

Q. (By Mr. Van Arkel) Give the reporter your full name, please? A. Harry S. Duffy.

Q. What is your address? A. 36-46 Bernard Drive, Wantagh, Long Island.

Q. Where are you presently employed? A. At the headquarters of the New York Typographical Union No. 6.

Q. In what capacity? A. I am the assistant benefit clerk.

Q. Is that a full-time job? A. Yes, sir, it is.

Q. Do you presently hold priority in any newspaper in New York? A. No, sir, I don't. I hold a priority in a commercial shop.

Q. Where do you hold the priority? A. At Publishers' Printing, Rogers-Kellog Corporation.

Q. When you finish your stint with the union, will you be able to go back to work in your priority order at that shop? A. Yes, sir, I will.

Q. What are your duties in the position you have described? A. As the assistant benefit clerk, I am in charge of the

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employment bureau of Typographical Union No. 6.

Q. Will you tell us in a few words how that operates?

Mr. Richman: May I object to that?

As far as I know, Typographical Union No. 6 does not concern itself with mail rooms.

Trial Examiner: Let's see what this leads up to. I will permit the question at this time.

A. Briefly, the operation of the employment bureau works on the basis that various employers—that is, commercial shops in the city—will call up the employment bureau asking for help of any particular nature.

At the same time, various unemployed people will come to the employment bureau trying to be placed in a particu-

lar shop so that I will try to be the liaison individual, so to speak, between the employer on the one hand who is looking for help, and the unemployed man who is seeking work.

Q. Do you ever have requests for assistance from persons who are not members of the International Typographical Union? A. I have had such cases arise, sir.

Q. If such person makes application to you for help, what do you do? A. If the individual is a non-member of the union, or a non-union journeyman, I will refer him to the organizer, who will refer him to the New York School of Printing where a competency test will be given him.

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The results of the test are sent to the union organizer. If he has passed that test, the man is referred to me, and if at that particular time there is a call from an employer, we will send that man out to cover the job.

Q. Have you sent such persons who were not members of the union out to work when they have demonstrated their competency? A. Yes, I have.

Q. Are you familiar with this School for Printing?

Mr. Richman: I want to note a continuing objection, if you didn't understand it as such, to this whole line of questioning.

Trial Examiner: Is it a fact that this employment bureau does not cover mailers?

Mr. Van Arkel: That is correct.

Trial Examiner: Then what is the relevancy here?

Mr. Van Arkel: The evidence already shows that the contract provisions which deal with printers are substantially identical with those which deal with mailers.

I am attempting to show here that these contractual provisions in New York do operate non-discrimi-

natorily to allow non-union journeymen to be placed in jobs.

Trial Examiner: If this practice does not apply to mailers, how will that be relevant?

Mr. Van Arkel: To show that these contractual provisions can be and are lawfully applied.

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Trial Examiner: You are referring to the I. T. U.?

Mr. Van Arkel: Yes. This is in behalf of the I. T. U., to show the legality of these proceedings.

Trial Examiner: I will overrule the objection.

* * *

Q. (By Mr. Van Arkel) Are you familiar with the School of Printing, Mr. Duffy? A. Generally speaking, I am, yes.

Q. Who are the persons who give these competency tests? A. The people who give the tests are employees of the Board of Education of the City of New York.

Q. Does this school operate under the Supervisor of the Board of Education of New York City? A. Yes. Actually, it is under the direct supervision of the Board of Education, and—yes, that's it. It is direct supervision of the Board of Education.

Q. Do you know from what sources it gets its funds, the school? A. I imagine that the direct source comes from the tax structure of the City of New York.

Mr. Richman: Is that so, or is this witness just imagining?

The Witness: Actually, when you talk about the school being under the direct supervision of the Board of

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Education, that it is. However, if you talk about, or if you bring into the picture the system under which our apprentices receive their training at the school, then it is also jointly paid for by the union, and also jointly paid for by the employer.

So, in a sense it could be considered a three-way set-up. But it is constantly under the supervision of the Board of Education.

Q. (By Mr. Van Arkel) Are apprentices at the trade—do they go to school there five days a week? A. Would you repeat the question?

Q. Do apprentices at the trade attend this school five days a week? A. No, they don't. Actually, what the provisions are is that apprentices go to school one day a week, half of which time is on the employer's time, and the other half is on the apprentice's time.

Q. Is this a form of supplementary education in addition to their experience on the job? A. Yes. That is its main purpose, to supplement their training.

Q. Do they have at this school the equipment and machinery necessary to give these competency examinations that you described? A. Yes, sir, they do.

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Mr. Van Arkel: That is all I have.

Trial Examiner: Do you have any questions, Mr. Sugarman?

Mr. Sugarman: No, I have none.

CROSS EXAMINATION:

Q. (By Mr. Richman) Mr. Duffy, who again do you say you send to the school of printing for competency examinations? A. Who do we send?

Q. Yes. A. Actually, the membership committee will refer applicants for membership to the school for their competency tests. Also, the representatives, or the organizers, will refer non-union journeymen to the school for their competency tests. The apprentices take their competency tests there, too.

Q. I think you said that if a non-member comes to you looking for work, you refer him to the organizer? A. That is true.

Q. And the organizer will then send him to the school for a competency test? A. That is correct.

Q. Is it not true that your employment bureau gets requests for assistance in finding work for members of the union coming in from outside New York City looking for positions? A. Occasionally it happens that members of the union

who come in from other jurisdictions will come in to see me and see what the work situation is.

Q. Normally, then, do I take it that members coming into the city won't come to your bureau? A. Yes, sir, that's right.

Q. Most of these members coming in from outside the city go to look for work on their own at the various shops of the city? A. They may answer ads in the newspapers, the help wanted ads; and sometimes they come to me.

Q. Isn't the method usually used by these members coming in from outside the city to go themselves to the various shops where they think they would like to work, or where they think they can find employment? A. I think if there is such a thing as an average, the general man who comes into the jurisdiction in New York may not be familiar with the various shops, and accordingly he will

come in to me for whatever help or assistance I can give him, because he may not know where the plants are. He will ask directions how to get to those places, and things like that.

Q. When a member does come in to you looking for work, do you refer him to the organizor? A. If a member comes in?

Q. Yes.

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A. No, I don't refer him to the organizor.

Q. Is this man sent to the New York School of Printing for a competency examination? A. No, he is not.

Q. You assume that he is competent; is that correct? A. I assume that he is competent on the basis that he holds membership in the union.

Q. You don't make the same assumption with respect to a person who is not a member and comes to you for assistance? A. No, I won't make that assumption.

May I elaborate on that?

Q. Not for my benefit at this time. A. All right.

Mr. Richman: No further questions.

RE-DIRECT EXAMINATION:

Q. (By Mr. Van Arkel) Mr. Duffy, is the examination that is given to persons that you refer to the School of Printing the same examination which is given apprentices before they can qualify for journeymen members in the union? A. Yes, sir, it is.

Q. You wanted to add something to your answer about the reasons why you assumed that persons who don't have a card in the union must take an examination? A. I wanted to say that a member of the International Typographical Union, before he did become a member of the

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union, had to pass an examination. That examination precluded that if he passed, it stated that he was competent.

With the non-union journeyman, we don't know exactly how many years he may have had at the trade at that particular time, and we don't know if he is competent. Therefore, that is why we do have to send him for a competency test.

Q. Have there been cases where some of these men have failed to pass the competency test that was given them? A. Yes.

Q. Do you have any figures on that? A. I can say this, and it will have to be general:

Under the contract, the employer has the right to send anybody up to the school, any non-union journeyman up to the school, to take a test. There may possibly have been at least fifty such people referred to the school since the language in the contract is as it is.

Approximately half of these people failed their test, and the other half passed it. Those who did pass their tests went to work immediately in the shop from which the management or the foreman sent them.

Mr. Van Arkel: That is all I have.

RE-CROSS EXAMINATION:

Q. (By Mr. Richman) I take it—and correct me if I am wrong—that all those who passed the test were then offered membership in the I. T. U.?

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A. I would say that all those who passed their test sought membership in the I. T. U.

Q. The competency examination that members take are different in different cities; is that so? A. I am inclined to think so, yes.

Q. You wouldn't know, therefore, exactly what the examination in a city like San Francisco entailed, would you? A. No; I have never seen their examination.

Q. However, you still presume that a member coming from San Francisco is competent to work in New York City; is that correct? A. Yes. I would say that he was competent for the simple reason that the examination, having been given by printers, that they possibly are the best judge of what a competent printer is, in the same sense that a carpenter would be the best judge of who a competent carpenter was, or a lawyer would be the best judge of who competent lawyers were.

Mr. Richman: I have no further questions.

Q. (By Mr. Van Arkel) Were all of those who passed this competency test given membership in the International Typographical Union when they made application? A. The local union rejected three of their applications for membership. Under the laws of the union, the rejected applicant for membership has the right of appeal to the

executive council of the International.

The International, or the executive council, reversed the local union on two particular instances, and ordered the local union to admit the two applicants to membership.

In the third instance, the executive council of the International sustained the local union in not admitting the one man that it had rejected to membership. However, this man has continued to work in the composing room under the same situation as anybody else.

Q. Did those who passed this competency test go to work before their applications for membership were passed on by the local union? A. Yes, sir, they did.

Mr. Van Arkel: That is all I have.

Trial Examiner: Anything further?

H. S. Bufty, for Respondents, Re-cross.
Stenographic Transcript of Testimony at Hearing of November 21, 1957.
W. E. Smollon, re-called for Respondents, Cross.

Q. (By Mr. Richman) I believe Mr. Randolph told us, and I would like you to confirm, that this one man who wasn't admitted to membership had performed an act which the union considered of a serious nature, and that would definitely disqualify him for membership? A. He did.

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Stenographic Transcript of Testimony at Hearing of November 21, 1957.

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PROCEEDINGS

Trial Examiner Libbin: The hearing will come to order.

* * *

WILLIAM E. SMOLLON, was re-called as a witness for and on behalf of the Respondent, and having been previously duly sworn, was examined and testified further as follows:

* * *

Further Cross Examination:

Q. (By Mr. Richman) Mr. Smollon, at what shop did Mr.

1086

Hauser work? A. Journal of Commerce.

W. E. Smollon, re-called for Respondents, Cross.

Q. How did the question arise concerning Mr. Hauser? A. Mr. Hauser was away from his job for quite a while, and when he came back to go to work the foreman refused to put him to work in his priority.

Q. The foreman claimed that Mr. Hauser had lost his priority? A. That's right.

Q. Did the chapel chairman take any position as to Mr. Hauser's priority that you know of? A. I don't think so. I don't think the chairman had anything to do with it.

Q. Did the union take any position with respect to Mr. Hauser's priority? A. I took a position.

Q. What was that? A. That he should go back to work in his priority status. In fact, they put him back to work the first night he was there.

Q. The foreman did? A. He put him on in his original position, and then the next night he refused to put him back.

Q. Do you know the reason for the foreman's refusal to put Mr. Hauser back the next night?

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A. It may have come from his employer, the Journal of Commerce.

* * *

Q. (By Mr. Richman) You know that it came from the employer? A. Yes; the second night.

Q. Then what happened after Mr. Hauser was refused work on the second night? A. We made a grievance case of it, the union did.

Q. The union filed a grievance? A. Yes.

Q. With whom? A. With the Publishers' Association. We filed a grievance against the Journal of Commerce to them, and also, as we do in those cases, we wrote a letter to the Publishers' Association.

Mr. Sugarman: The procedure we regularly follow is that we lodge the grievance with the Publishers' Association as agent of the publishers signatory. That is the way it is described in the agreement; and we

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also send a copy of that grievance letter to the publisher involved.

The Witness: I think you prepared the letter.

Mr. Sugarman: Yes, I did.

Q. (By Mr. Richman) What was the position that the employer took with respect to Mr. Hauser? A. They thought he was away too long.

• • •

Q. (By Mr. Richman) Basically, Mr. Smollon, the position of the union was that the man had retained his priority

1089

and should go to work in his old priority order? A. That's right.

Q. And the company's position was that this man had been away from his work too long, and therefore had lost his priority in the shop? A. That's right.

Q. That went to a five-man panel for arbitration? A. Yes; it went to an Arbitrator.

Q. The vote was three-to-two in favor of keeping him out of his priority standing? A. That's right.

Q. Do you know of any other cases of that nature? A. No, I don't.

Mr. Richman: No further questions.

FURTHER RE-DIRECT EXAMINATION:

Q. (By Mr. Sugarman) Mr. Smollon, was it not the fact that Mr. Hauser was simply deprived of his priority

only, but he was told he could shape for work? A. That's right.

Q. He was not denied the opportunity of employment? A. No.

Q. Only his priority? A. Just his priority.

Q. It is not a fact that the foreman testified against the union in that proceeding?

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A. Yes.

Mr. Richman: I object to that. That is going into something that Mr. Sugarman didn't want to touch on before.

Mr. Sugarman: No, it isn't going into that at all. This touches on a very vital issue.

Trial Examiner: I will sustain the objection. That is sort of conclusionary.

Mr. Sugarman: I would like to make an offer in very brief summary.

Trial Examiner: Do you have a copy of the Arbitrator's decision?

Mr. Sugarman: No, I don't have it here.

The offer will be that the testimony that I seek to adduce would establish that the foreman, far from having delegated—

Trial Examiner: Get it in question and answer form, Mr. Sugarman.

Mr. Sugarman: All right.

Q. (By Mr. Sugarman) The foreman was the man who took away Hauser's priority; is that correct? A. That is correct.

Q. And the foreman testified in behalf of management against the union; is that correct? A. That's right.

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Q. And was subjected to cross examination by myself as counsel for the union? A. Yes.

Trial Examiner: If you won't go into any further detail, I will let the answer stand.

Mr. Sugarman: Thank you.

That is all.

Mr. Richman: Is that the offer of proof?

I would like to move that it be rejected.

Trial Examiner: I will overrule your objection and I will let the answer stand.

Mr. Richman: Then I have one further question.

FURTHER RE-CROSS EXAMINATION:

Q. (By Mr. Richman) You say the foreman took away his priority, Mr. Smollon—you said that to Mr. Sugarman just now? A. That's right.

Q. That was at the instance of the company?

The company told the foreman to take away Mr. Hauser's priority as of the second night? A. As I said to you before, he went to work one night, and the second night he didn't put him to work, and he took away his priority.

Q. That right. A. You asked me, and I say that I presume that is was because of an action from upsfairs.

1092

I could go further into that, but I don't think I would be allowed to. I don't think you would let me tell you why. I could tell you why.

Trial Examiner: We don't want to know why you presume; we just want to know if you know of your own knowledge.

The Witness: I can't say outright that I know they did that.

Trial Examiner: That is your answer, then; you don't know.

Q. (By Mr. Richman) Is it true that the foreman, if he had received no orders from anyone else, would have permitted Mr. Hauser to work after the first night? A. That is questionable; I don't know that.

Q. But the foreman put him on the first night? A. He did, yes.

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Mr. Richman: * * *

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I don't believe I have indicated, and I am not indicating, that there are any violations charged with respect to the methods by which members are admitted to the union.

* * *

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In viewing this case, I first sat down and read through the contract. On its face, the provisions in the document itself, I say at this time, apparently contain nothing which on their face could be said to be violative of the Act.

However, when I came to Section 24, naturally I wanted to see what the general laws provided. In going through the general laws, I compared them with the provisions of the general laws with the provisions of the agreement, and to the best of my ability I eliminated those of the general laws which covered conditions that the contract specifically covered with contractual language.

That left certain of the sections which, in the opinion of the General Counsel, fell within this incorporation provision—and I believe I have given those provisions in answer to Mr. Van Arkel's request—as provisions which the General Counsel contends

are incorporated by reference, and provisions which, when incorporated by reference, create an illegal contract.

* * *

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Mr. Richman: On that phase, yes.

I will say this at this time: My reading of the contract did not indicate that there was any violation with respect to the method by which a person could become a journeyman, at least from the face of the contract.

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That appeared to be valid as set out in Section 20(b) of the contract.

The contract provides that "Persons seeking to qualify as journeymen shall be given an examination under non-discriminatory standards and procedures established by the parties hereto by impartial examiners qualified to judge journeyman competency selection by the parties hereto. In the event agreement cannot be reached on the standards or procedures to be followed, or the examiners to conduct such examinations, the dispute shall be submitted to the Joint Standing Committee, whose decision shall be final and binding."

There is no provision for submitting the results of such examination to the Joint Standing Committee, and in practice we have seen, at least in the Daily News, Superintendent Rotenberg was the impartial examiner who acted on behalf of the publisher.

As I say, while on the face it seems quite innocuous, in practice we do see the discrimination and action, or the potentiality for discrimination.

* * *

Stenographic Transcript of Testimony of Oral Argument Before the Board, October 21, 1958.

Stenographic Transcript of Testimony of Oral Argument Before the Board, October 21, 1958.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual
and
THE WALL STREET JOURNAL,
DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

—o—

Stenographic Transcript of Testimony of Oral Argument Before the Board, October 21, 1958.

2

Room 2030,
Health, Education and Welfare Building (South)
Washington, D. C.,

Tuesday, October 21, 1958

The above-entitled matters came on for oral argument at 11:00 a. m.

Before: Boyd Leedom, *Chairman.*

Philip Ray Rodgers, *Member.*
Stephen S. Bean, *Member.*
Joseph A. Jenkins, *Member.*
John H. Fanning, *Member.*

Appearances:

Sidney Sugarman, Esq., 295 Madison Avenue, New York, New York, appearing on behalf of New York Mailers' Union No. 6, Respondent.

Gerhard P. Van Arkel, Esq., 1701 K Street, N. W., Washington, D. C., appearing on behalf of International Typographical Union, AFL-CIO, Intervenor.

Arnold Ordman, Esq., National Labor Relations Board, Washington, D. C., appearing on behalf of the General Counsel.

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Mr. Fanning: One question.

Chairman Leedom: Go ahead, Mr. Fanning.

Mr. Fanning: Would you care to comment on the applicability of the so-called Brownell Remedy to these cases?

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Mr. Ordman: I would, I am glad you called it to my attention.

In any situation, it adds up logically, if the Board please, in any situation where you have got to be a member to hold a job, then any fees you pay, fees assessments per capita tax as cost of keeping that membership have been, in effect, extorted from you.

In other words, I have not the freedom as to whether I am going to pay fees, dues or assessments or not.

I have got to be a member to hold this job, in order to be a member I have got to pay this, my dues and assessments.

I know there is some dispute, it makes a difference as to whether there is a check-off or not a check-off. I submit it makes no difference. I may be repeating myself. It makes no difference whether you come to me, whether the employer just checks it off my pay or whether it is just a dismal burden if I have to find the Union steward and pay them. The fact is I have got to do it, to pay if I have a job. If the requirements of my membership to hold my job is illegal, if I have to pay just to hold my job, it is illegal to make me pay my dues, if I have paid these dues, illegally, I am entitled to get my dues back. I think this agency should so provide.

Mr. Fanning: Does General Counsel so recommend?

Mr. Ordman: The General Counsel does recommend

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Brown-Olds, wherever proper.

ARGUMENT IN REBUTTAL—MR. VAN ARKEL

Mr. Van Arkel: * * *

Needless to say, the application of the Brown-Olds Remedy cannot even be considered here.

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The matter was not litigated in either of these cases. If it had been litigated, we would be able to show the Board that far and away the largest percentage of dues which are paid for membership in the ITU go for support of the pension plan, a mortuary benefit, the support of the Printers Union Home, similar fraternal benefits, obviously employment in the Union here cannot be made an insurance company to pay in effect premiums for benefits to be received.

We also would have been able to show a way in which dues have been collected to show it is perfectly voluntary collecting, that with the fact you have here non-discriminatory contracts, non-discriminatory hiring practices, obviously there is no room for introducing application of the Brown-Olds Remedy.

* * *

General Counsel's Exhibit 2.

AGREEMENT

between

PUBLISHERS' ASSOCIATION OF NEW YORK CITY

and

NEW YORK MAILERS' UNION NUMBER SIX

Effective December 8, 1954
for a term of two (2) years
Expiring December 7, 1956

(Union Label)

* * *

Section 1. Agreement made and entered into by and between the Publishers' Association of New York City as agent of the following individual Publishers signatory hereto: The New York Times, New York Journal-American, The News, New York Mirror, New York Post, New York World-Telegram and Sun, Il Progresso Italo-Americano, Long Island Daily Press, Long Island Star-Journal, and the Journal of Commerce, hereinafter called the Publisher, and New York Mailers' Union No. 6, hereinafter called the Union.

Party of the first part hereby recognizes the party of the second part as the exclusive bargaining representative of all employees covered by this agreement. The words "employee" and "employees" when used in this contract apply to journeymen and apprentices as defined herein.

General Counsel's Exhibit 2.

The International Typographical Union is not a party hereto and it is agreed that approval of this agreement by the International Typographical Union does not make it a party.

Section 2. *Jurisdiction.* It is mutually agreed that the jurisdiction of the Union heretofore recognized shall be preserved. It is the intent of the parties that this contract shall neither take away from nor add to such jurisdiction.

[1]

This jurisdiction is defined as covering all mailing room work and all employees engaged in work appertaining to all mail, baggage, and express deliveries of newspapers, magazines and periodicals, such as tagging, bagging, inserting, stamping, checking blotters with wrappers for baggage, mailing and express, dissecting, wrapping, tallying, bundling, manning delivery end of elevators and escalators leading out of the press room, preparing wrappers in the mailroom, stripping lists, routing of mail, counting and tieing and the work of delivery clerks tallying and passing publications to the city delivery. The above definition shall not be invoked by either party to change present work.

* * *

Section 4. Superintendents and Foremen and Assistant Foremen of Mailing and Delivery Departments shall be appointed and may be removed by the Publisher, and shall be members of New York Mailers' Union No. 6. Superintendents', Foremen's and Assistant Foremen's wages and hours shall be a matter of mutual agreement between the Publisher and the individual. They shall supervise and attend to all work as specified in this agreement. Their wages, however, shall not be lower than the basic wage

scale and their hours of work shall not exceed the hours prescribed in Sections 9 and 10. The designated Assistant Foreman shall have the power and the authority of a Foreman or Superintendent in case of their absence. Any foreman or assistant foreman who does not confine his activities exclusively

[2]

to executive or clerical work is subject to the journeyman hours and overtime provisions.

Section 5. *Considerations.* The Publishers agree to employ or continue in employment only journeymen and apprentices in the mail rooms of the Publishers in accordance with the terms of this agreement. New York Mailers' Union No. 6, whenever called upon, offers to supply the office with competent, experienced and satisfactory men. In furnishing such men, the Union offers to furnish men legally qualified to work on a straight-time basis. The foregoing shall not affect the payment of overtime as provided for in Sections 13 and 14 of this contract.

Section 7-a. Wage rates effective with the day shift on December 8, 1954, and during the first year of this agreement shall be as follows:

MAILERS

	Night Work	*Day Work*
Per week of 5 shifts	$100.40	$ 98.05
Per 7-hour shift	18.995	——
Per 8-hour shift	21.708	19.61
Per hour, straight time	2.7135	2.4513
Per hour, overtime	4.0703	3.6770

[3]

General Counsel's Exhibit 2.

STAMPERS AND DELIVERY CLERKS

	Night Work	*Day Work*
Per week of 5 shifts	$102.91	$100.55
Per 7-hour shift	19.470	——
Per 8-hour shift	22.251	20.11
Per hour, straight time	2.7814	2.5138
Per hour, overtime	4.1721	3.7707

OPERATORS ON AUTOMATIC MAILING MACHINES

	Night Work	*Day Work*
Per week of 5 shifts	$105.43	$103.05
Per 7-hour shift	19.947	——
Per 8-hour shift	22.796	20.61
Per hour, straight time	2.8495	2.5763
Per hour, overtime	4.2743	3.8645

Wage rates effective with the day shift on December 8, 1955, and during the remainder of this contract shall be as follows:

MAILERS

	Night Work	*Day Work*
Per week of 5 shifts	$102.80	$100.45
Per 7-hour shift	19.448	——
Per 8-hour shift	22.227	20.09
Per hour, straight time	2.7784	2.5113
Per hour, overtime	4.1676	3.7670

General Counsel's Exhibit 2.

STAMPERS AND DELIVERY CLERKS

	Night Work	*Day Work*
Per week of 5 shifts	$105.31	$102.95
Per 7-hour shift	19.923	——
Per 8-hour shift	22.770	20.59
Per hour, straight time	2.8462	2.5738
Per hour, overtime	4.2693	3.8607

[4]

OPERATORS ON AUTOMATIC MAILING MACHINES

	Night Work	*Day Work*
Per week of 5 shifts	$107.83	$105.45
Per 7-hour shift	20.400	——
Per 8-hour shift	23.314	21.09
Per hour, straight time	2.9143	2.6363
Per hour, overtime	4.3715	3.9545

Section 7-b. Operators and Operators' Assistants on newspaper inserting machines shall receive the scale provided for automatic mailing machine operators for each shift when employed on such machines.

Section 7-c. *Trust Fund.* The Publishers hereby agree that, commencing with the day shift on December 8, 1954, they shall contribute weekly to the Mailers'-Publishers' Welfare Trust Fund, the sum of fifty-five (55) cents per shift worked by each journeyman and apprentice employee covered by this contract, but not in excess of five (5) shifts in any payroll week in any one office for any one employee.

It is understood by the Publishers' Association, and the Association hereby approves the arrangement, that payments to the Mailers'-Publishers' Welfare Trust Fund shall be permitted and accepted from newspaper publishers not presently members of the Publishers' Association, from employers in the commercial or book industry, and from the Union for those employed in Union activities, provided such payments shall be made on the same basis as agreed to herein.

[5]

Section 20-a. The operation, authority, and control of each mail room shall be vested exclusively in the office through its representative, the Foreman. In the absence of the Foreman, the Foreman-in-Charge shall so function. Foremen of Mail Rooms have the right to employ help and may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, which shall be kept conspicuously posted, and which shall in no way abridge the civil rights of employees or their rights under accepted International Typographical Union laws, and (4) to decrease the force, such decrease to be accomplished by discharging first the person or persons last employed, either as regular employees or as extra employees, as the exigencies of the matter may require. Should there be an increase in the force, the persons displaced through such cause shall be re-employed in reverse order in which they were discharged before other help may be employed. Upon demand, the Foreman shall give the reason for discharge in writing. The substitute oldest in continuous service shall have prior right in the filling of the first vacancy.

[11]

Employees considered competent as substitutes by Foremen shall be deemed competent to fill regular situations. This section shall apply to incoming as well as outgoing Foremen. Employees legally discharged according to the provisions of this section, except to reduce the force, may be reinstated only at the option of the Foreman. Provided, an employee discharged for incompetency, neglect of duty, or a minor reason shall not be denied the privilege of seeking work in the office for a period longer than six months.

Section 20-b. The Foreman shall do all the hiring and discharging of all employees engaged in working in the various mail rooms. The Foreman shall have sole authority to issue orders, but he may designate other members to act as Assistant Foremen to direct the work, and all employees shall comply with all such orders issued within the terms of this agreement. Failure to comply shall constitute grounds for discharge. Only journeymen and apprentices shall be employed on work covered by this agreement. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided elsewhere in this agreement. Journeymen are defined as: (1) Persons who prior to the effective date hereof worked as such in the mailing rooms of papers signatory to this contract; (2) persons who have completed apprentice training as provided in this contract, or have passed a qualifying examination under procedures heretofore recognized by the Union and the Publishers; (3) persons who have passed an examination recognized by both parties to this contract and have qualified as journeymen in accordance therewith. Persons seeking to qualify as journeymen shall be given an examination under non-discriminatory

standards and procedures established by the parties hereto by impartial examiners qualified to judge journeyman competency selected by the parties hereto. In the event agreement cannot be reached on the standards or procedures to be followed, or the examiners to conduct such examinations, the dispute shall be submitted to the Joint Standing Committee whose decision shall be final and binding on the parties.

Section 20-c. The Union shall not discipline the Foreman for carrying out the instructions of the Publisher or his representatives in accordance with this agreement.

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[13]

Section 24. Both parties agree that their respective rights and obligations under this contract will have been accorded by the performance and fulfillment of the terms and conditions thereof and that the complete obligation of each to the other is expressed herein. It is understood and agreed that the General Laws of the International Typographical Union in effect January 1, 1955, not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein.

It is mutually agreed that for the period from the effective date to January 1, 1955, the provisions of Section 24 with respect to laws will be subject to 1954 rather than 1953 I. T. U. Laws.

Nothing contained herein shall be construed to interfere in any way with the creation or operation of any rules not in conflict with federal or state laws or this contract, of

any chapel or of the Union or of the Publishers for the conduct of its or their own affairs.

It is the intention and the desire of the parties hereto that no strike or other interruption of normal employment or production shall occur during the life of this agreement. To this end the Union and the Publishers commit themselves to the orderly settlement of disputes as provided herein. However, New York Mailers' Union No. 6, I. T. U., reserves to itself the right to direct its members to support a strike of this Union or of New York Typographical

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Union No. 6, against any Publisher or Publishers signatory hereto, which strike has been authorized under the laws of the I. T. U.

* * *

Section 26. One apprentice may be employed for each twelve regular situations or less and one additional apprentice for each additional twelve regular situations. But in no case shall an apprentice be allowed in an office having less than five regular situations. And in no case shall more than seven apprentices be allowed in an office.

Section 27-a. *Rules.* Apprentices shall learn one branch each year of their apprenticeship and shall not be allowed to operate any mailing machine until the fourth and fifth years and shall not take the place of a journeyman unless a substitute cannot be secured. No apprentice shall be allowed to work more than five days or five nights a week or work overtime except in an emergency, and only when the number of journeymen working overtime on the same shift equals the ratio provided in Section 26.

General Counsel's Exhibit 2.

Section 27-b. A Joint Apprenticeship Committee composed of an equal number of representatives of the Union and employers shall be selected by the

[16]

parties to this agreement. All provisions of this agreement affecting apprentices shall be under the jurisdiction of this committee, which shall have control of, be responsible for, the selection of apprentices and shall be vested with full power and authority to enforce all conditions outlined herein. Should the committee fail to agree on any question the matter shall be submitted to an arbitrator as provided in the Joint Standing Committee section hereof whose decision shall be final and binding.

* * *

Section 29. *Advancement of Apprentices.* Pursuant to the provisions regarding training of apprentices, the Foreman shall determine when an apprentice is properly entitled to pass from one period to another, but such determination shall be subject to appeal to the Joint Apprenticeship Committee.

* * *

[17]

GRIEVANCES.

* * *

[18]

Section 33-c. If the Joint Standing Committee cannot reach an agreement on any dispute (except discharge cases) within five (5) days (this time may be extended by agreement) from the date on which the dispute is first consid-

ered by it, at the request of either party hereto, the members of the committee shall form a Board of Arbitration and shall select a fifth member, who shall be a disinterested party and who shall act as Chairman of the Board. Said fifth member may be selected in any manner agreed upon by the four members. If said four members fail to select a fifth member within ten (10) days from the date on which either party requested the formation of the Arbitration Board, said fifth member, who shall be a resident of New York City, shall be selected by the Senior Judge of the United States District Court for the Southern District of New York, upon the request of either of the parties hereto. The Board of Arbitration thus formed shall proceed with all dispatch possible to settle the dispute. It shall require the affirmative votes of at least three of the five members of the Board of Arbitration to decide the issues, and the decision of the local Board of Arbitration in all cases shall be final and binding on the parties hereto. The decision of the Board of Arbitration shall be legal and binding when signed by a majority. Provided: That local union laws not affecting wages, hours, or working conditions and the General Laws of the International Typographical Union shall not be subject to arbitration.

[20]

• • •

Section 38. *Mutual Guarantees.* Because of the enactment of the Labor-Management Relations Act of 1947 this contract differs from contracts between these parties over a period of many years. It is understood and agreed, however, for the duration of this contract, that if any provision modified from any preceding contract or excluded from

this contract solely because of the restrictions of law, no longer is held to be inoperative, either by legislative enactment or by decision of the court of highest recourse, then such provision automatically shall become a part of this contract, to the extent permitted, and be in force and effect as though it had been originally made a part hereof.

To the best knowledge and belief of the parties this contract now contains no provision which is contrary to Federal or State Law or regulation. Should, however, any provision of this agreement, at any time during its life, be in conflict with Federal or State Law or regulation then such provision

[24]

shall continue in effect only to the extent permitted. In event of any provision of this agreement thus being held inoperative, the remaining provisions of the agreement shall, nevertheless, remain in full force and effect.

* * *

[25]

General Counsel's Exhibit 5.

CONSTITUTION

AND

BY-LAWS

(SEAL)

NEW YORK MAILERS' UNION NUMBER SIX

INTERNATIONAL TYPOGRAPHICAL UNION

(Union Label)

CONSTITUTION

ARTICLE I.

Title and Objects

* * *

SEC. 7. All work appertaining to mailing, such as addressing, tagging, bagging, stamping, labeling, bundling or wrapping, preparing lists or wrappers, operating stencil machines, sorting, routing, dissecting or marking wrappers, taking bundles or papers from conveyors or escalators, stacking, folding, handling of bundles or mail sacks, distributing, counting of papers (leaving or returning), tying, sacking, delivering papers (to mailers, carriers, agents or newsboys), checking blotters with wrappers for baggage, mail and express, tallying, manning delivery end of elevators and escalators leading out of

the pressroom; delivery clerks tallying and passing publications to the city delivery and stamping, tying rolls,

stamping of sample copies, putting postage stamps on wrappers and envelopes and any work either done by hand or power pertaining to mail; operation of tying machines, stuffing machines and multi-mailing machines, bundling machines, and any other machines used in inserting, bundling or mailing publications, inserting or dispatching of papers, envelopes or magazines, whether done by hand or power machine (including auxiliary machines used in preparatory work for making plates, stencils, or any device that may be used in placing names or addresses on wrappers or papers, etc.), now in use or that in the future may be introduced, is part of the mailing craft, and no person except members and apprentices of this Union shall be allowed to perform such work.

ARTICLE II.

Membership and Obligation

* * *

SEC. 2. Every person admitted as a member of this Union shall be introduced to the president, and requested to raise his or her right hand while repeating these words:

I (giving name) *hereby swear (or affirm) that I will, in good conscience, and to the best of my ability, comply with and perform the Duties of Membership of the International Typographical Union, all of which shall in no way interfere with any duty I owe to God or my country.*

* * *

General Counsel's Exhibit 5.

6 CONSTITUTION

ARTICLE III.

Rights and Obligations of Members

Section 1. Each member of this Union is obligated to support, abide by, enforce and maintain the Constitution, By-Laws, Rules and Regulations of this Union. He shall render to this Union such services as may be reasonably demanded of him, and perform such other duties as may be assigned to him, it shall be incumbent upon members to maintain friendly relations among each other, and to avoid by all means within their power, strife and discord. This Union may take any course that may be necessary to remedy the situation.

* * *

24 CONSTITUTION

ARTICLE XIV.

Chapels

Their Formation and Government

* * *

Sec. 2. Chapels shall establish a system for registering and recording the priority standing of members in the Chapel, which shall be conspicuously posted or kept in a place within the Chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

* * *

General Counsel's Exhibit 5.

ARTICLE XV.

Duties of Chairman

* * * *

Sec. 4. He shall see that none but members of New York Mailers' Union No. 6 are employed in his Chapel, and immediately report, in writing, to the President of the Union the names of all non-union men employed in his Chapel with reasons for same. He shall report in writing all violations of the Constitution and By-Laws.

* * *

Sec. 7. Under no circumstances shall the Chairman allow the office to work shorthanded if possible to obtain a Union substitute.

* * *

Sec. 15. Any Chairman who allows a delinquent member to work shall be summoned before the Executive Committee.

* * * *

Sec. 17. The Chapel Chairman shall keep permanently posted or in an accessible place within the

Chapel, a complete and up-to-date priority list of the members of his Chapel. A true copy of this list shall be sent to the President of the Union and he shall be notified of all changes thereon. The Chairman shall not place the

name of any member on this priority list until such member has personally deposited his card with him.

* * *

ARTICLE XVI.

Machines

Section 1. None but journeymen members of this Union shall be allowed to operate any mailing machine, stamping machine, addressing machine, auxiliary machine used in connection therewith, inserting or tying machine or any other machine that may hereafter be introduced.

Sec. 2. Members of this Union shall handle and deliver all papers and books wrapped, stamped, inserted or tied by such machines.

* * *

BY-LAWS

* * *

ARTICLE II.

General Discipline

* * *

Sec. 2. It shall be the duty of each and every member of the Union to sustain the officers in the proper discharge of their duties.

* * *

General Counsel's Exhibit 5.

Sec. 17. Members of this Union shall tag all mails and tie up all rolls. Stamping of free sample copies must be done by mailers only, also pasting dodgers on sample copies, dissecting of papers, stuffing envelopes, putting postage stamps on wrappers, and putting stamps on envelopes. (All work covered in Article I, Section 7 Constitution. Jurisdiction.)

* * *

ARTICLE IV.

Priority

Section 1. Members considered capable as substitutes shall be deemed competent to fill regular situations, and the substitute oldest in continuous service shall have prior right in the filling of the first vacancy. This section shall apply to incoming as well as outgoing foremen.

Sec. 2. The Union shall establish a system for registering and recording priority standing of members.

Sec. 3. No member shall hold priority in more than one office, nor shall a member retain priority standing or a situation in an office if he performs work over which the Union has jurisdiction, either supervisory or mechanical, in another office.

* * *

Sec. 5. Available priority substitute competent to perform the work must be placed on all situations after the

situation holder has been absent from his or her situation for a period of thirty (30) calendar days; provided, should a substitute with greater priority become available, such substitute shall be placed on said situation.

* * * *

ARTICLE XI.

Foremen

Section 1. Foremen of offices have the right to employ help, and may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules (which shall be conspicuously posted) or of laws of the Chapel or Union, and (4) to decrease the force, such decrease to be accomplished by discharging first the person or persons last employed, either as regular employees or as extra employees, as the exigencies of the matter may require. Should there be an increase in the force the persons displaced through such cause shall be reinstated in reverse order in which they were discharged before other help may be employed. Upon demand, the foreman shall give the reasons for discharge in writing. Persons considered capable as substitutes by foremen shall be deemed competent to fill regular situations and shall be given preference in the filling of vacancies in the regular force. Any substitute with

an office standing of at least sixty (60) days is eligible to a vacant situation. This section shall apply to incoming as well as outgoing foremen.

* * * *

Sec. 4. No foreman shall have the right to discharge or discipline a journeyman for putting on an incompetent substitute, if the foreman has not notified the journeyman of the substitute's incompetency. No substitute shall be barred from working in an office for failure to show up when not engaged.

Sec. 5. No foreman shall be permitted to work under the jurisdiction of this Union unless he is a member of the Union in good standing.

• • •

Sec. 7. Foreman shall give the Chairman of the Chapel ample time to procure a substitute for an absent regular.

• • •

General Counsel's Exhibit 6.

DAILY NEWS PRIORITY

W. McGuire (B)
H. Dougherty
C. Vanderhoven
D. Daly (B)
H. Cousens
T. Burke
L. Parajos
E. Haynia
G. Prendergast
G. Burkhart
D. Nagle
A. Janicki
E. Dongherty
W. Rose
G. Joiner
P. Smiley
F. Renner
H. Gervey (B)
J. Clifford (B)
W. Self (B)
L. Rotenberg
F. Monaghan
J. Cody
S. Cascioli
W. Early
W. Siegel (B)
A. Sesselman
E. Lamb
R. Grant
S. Clement (B)
C. Tresham
B. Meyer
J. Cummings
J. Dassau (B)

General Counsel's Exhibit 6.

J. Baden
G. Costello
S. O'Meara (B)
Moe Lobel
S. Simons (B)
J. Gerdes (B)
S. Burke (B)
G. Becker (B)
R. Gill
A. Rieger
F. Ward (B)
J. McGovern
E. Sinclair (B)
Max Lobel
R. Scarpati (B)
H. Bernhart
H. Antomez (B)
J. Anderson (B)
J. Kneff (B)
R. Brandow
R. Donovan (B)
C. Larson
J. Kenneally
P. Goldblatt
C. Conklin (B)
J. Hoffman (B)
J. McGinn (B)
H. Goldblatt
A. Higgins (B)
J. McKenna (B)
J. Gorman (B)
J. V. Brown (B)
L. Parajos Jr.
A. Cascioli (B)
J. Farrell
E. Cohen
M. Reiner
W. Becker
M. Lewis
T. Sinclair
H. Gaynes
Al Gervey (B)
J. Hasson
L. Barron
J. Friedman
M. Cohen (B)
E. Kerner
M. Robinson (B)
M. Farber
M. Scarpati (B)
J. Eaton
J. Kelly
H. McGinnis
L. Freda
R. Morrissey (B)
B. Gray
D. Daly Jr. (B)
G. Grant (B)
J. Hagen
J. King Jr.
R. Oldham (B)
A. Scarpati (B)
J. Haynia (B)
T. Moore (B)
H. Friedman
J. Lamb
T. Higgins (B)
M. Manheimer
R. Sinclair
V. Quinn (B)
W. Eaton Jr. (B)
J. Rende (B)
V. Sisk
L. Herlehy (B)
P. Gold
N. Stein (B)
L. Scarpati (B)
M. Berndt
B. Conway
J. Odea
J. Reynolds (B)
S. Galle
M. Brody
E. Farrell (B)

H. Hand
F. Detto (B)
H. Lynch
W. Ryan (B)
J. Bader
N. Gervey (B)
W. Chandler
F. Gorman
V. Cipirano
J. Barci (B)
A. Taylor
M. Weinberg
D. Murphy
W. Dubbins (B)
W. Rose Jr.
L. Bobstein (B)
E. Sinclair Jr.
G. Berman
A. De Maria
V. King
D. Ozsvath
H. Englert (B)
J. Tellander
J. Ward
P. Puciloski
J. Silverman
R. Clifford (B)
M. Scarpati (B)
C. Downey (B)
W. Meehan
F. Coglietta
G. Cornish
John Brown
R. Benedict
S. Manheimer (B)
L. Reisenbeck (B)
Walter Haynia (B)
M. Kenneally
A. Savarese (B)
G. Eybs (B)
E. Malchiodi
A. Mattero
M. Doherty (B)
A. Anobile
R. Woodruff
L. Reiner
H. Gersten (B)
H. Klein
J. McKenna Jr. (B)
P. Mastriana
R. Regan
H. Chiara
G. Gasser
P. Baker
P. Poire
J. McGrath (B)
E. Hayden
J. Brandow
W. Carroll (B)
F. Berndt
J. Farber
J. Englert
J. Lynch (B)
S. Greco
J. Oliveri (B)
A. Caputa (B)
W. Alfonse (B)
B. Gorsky
R. Barnett
A. Oettner (B)
C. Downey
W. Chassy
R. Schaefer
A. Molk
D. Parnell
A. Watzel
F. Hays

General Counsel's Exhibit 6.

Substitutes

C. Russell
L. Goldwasser
J. Flaherty
G. Passman
J. Seminick
H. Barnett
J. Ortega
F. Meyer
F. Norton
T. Hasson
E. Shaw
R. Urgo
R. Jones
M. Pepkin
J. Soffel
P. Hogan
W. Wirth
F. Zucchi
P. Kutzman
C. Kaplan
E. G. Lamb
T. Boyle
H. Cresser
P. Romano
C. Glickman
A. Desiderio
E. Schweers
F. Schweers
J. Pillittiere
J. Puciloski
M. Carlin
F. Seymour
A. Parlati
R. Tirelli
John O'Boyle
W. Mulhall
R. Maresco
W. S. Fischer
S. Modrzewski
R. McCarthy
F. Cornish
G. Musella
Peter Freda
Geo. Redden
E. Sisk (Service)
J. Conway
J. Cohl
M. Tobin
F. Musella
R. Freda
C. Matizgeck
Paul Freda
A. Parajos
M. Peltzman
E. Pignoni
G. Parajos
J. Ortega
N. Gerson
W. Lynch
I. Carlin
P. Benson
J. Havietes
F. Reres
J. Maloney
E. Piccolo
R. Hoffman
M. Simon
F. Haynia

(Revised June 27, 1956)

General Counsel's Exhibit 11a.

Earnings for Julius Arrigale—S. S. #054-26-9656—Reported as Joseph for 1st three quarters of 1956 and last quarter of 1955.

	Week	1956	Week	1955	Week	1954
	9/ 4/56	$24.73	12/13/55	$ 48.88		
	8/ 7	24.73	11/29	24.15		
	7/31	49.46	11/22	24.15		
	7/10	51.85	11/15	58.81		
$150.77	6/19	24.73	11/ 8	24.65		
	6/12	51.35	11/ 1	34.16		
	6/ 5	49.96	10/25	24.15		
	5/ 8	25.23	10/18	106.11		
	4/24	50.85	10/11	24.65		
$202.12	3/20	49.46		$369.71		
	2/21	24.73				
	2/14	70.02				
	1/24	24.73				
	1/17	24.73				
	1/10	24.73	4/12	34.16		
$218.40						
			3/15	24.15		

General Counsel's Exhibit 11c.

LOUGHRAN, P. S., SR. 103-07-2468

W/E	No. of Shifts	W/E	No. of Shifts	W/E	No. of Shifts
9/18/56	1	6/ 5/56	4	4/24/56	1
9/11/56	3	5/29/56	1	4/10/56	1
9/ 4/56	1	5/22/56	4	4/ 3/56	1
8/21/56	1	5/15/56	3	3/27/56	2
8/ 7/56	1	5/ 8/56	5	3/20/56	1
6/12/56	2	5/ 1/56	1		
12/13/55	1				
12/20/55	2				
12/27/55	1				

General Counsel's Exhibit 12.

DOW JONES & COMPANY, INC.
44 Broad Street—New York 4, N. Y.

November 12, 1957

National Labor Relations Board
Two Park Avenue
New York 16, New York

Dear Sirs:

According to our records, below is shown the first date of employment and subsequent employment of various mail-room employees:

	First date of employment	*Shifts worked from date of employment to 12/25/56*
A. O'Brien	2/13/56	177
R. Koenig	2/13/56	199
J. Sisk	6/17/56	113
C. W. Christ, Sr.	7/15/56	93
C. Dassau	9/26/56	38

Very truly yours,

DOW JONES & COMPANY, INC.,

W. E. Jacoby,
W. E. Jacoby,
Assistant Secretary.

General Counsel's Exhibit 13.

Date	*Subs*
E. Patrick	C. Mitchell
M. Every	L. Wolff
W. Trimble	M. Hardman
T. Harty	J. Cullem
M. Bross	J. Wilkinson
A. Linneman	R. Devine
F. (Illegible)	R. Koenig
E. Helfenstein	A. O'Brien
J. Mittendorf	J. Sisk
A. Curto	
A. Guilfoyle	
T. Roseman	
J. Bross	
T. Haggerty	
A. Buckman	
E. Mitchell	
H. McCarthy	
A. Poetta	
A. Wallstein	
J. Curto	
A. Molczyk	
W. Doody	
H. Glaudel	
O. Nutini	
J. O'Leary	
H. MacLeod	
D. Guerin	

General Counsel's Exhibit 20.

BOOK OF

LAWS

of the

INTERNATIONAL TYPOGRAPHICAL UNION

(Union Label)

Effective January First
1957

GENERAL LAWS
1957

* * *

(80)

ARTICLE III—CONTRACTS

* * *

SEC. 12. It is the unalterable policy of the International Typographical Union that all composing and mailing room work or any machinery or process appertaining to printing and mailing and the preparations therefor belongs to and is under the jurisdiction of the International Typographical Union. Subordinate unions are hereby directed to reclaim jurisdiction over and control of all composing and mailing room work or any machinery or process appertaining to printing and the preparations thereof now being performed by non-members.

* * *

General Counsel's Exhibit 20.

ARTICLE V—FOREMEN

• • •

SEC. 11. All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft and entitled to all the privileges and benefits of membership.

SEC. 12. The International Typographical Union recognizes only two classes of labor in union shops, journeymen and apprentices.

• • •

ARTICLE VII—MACHINES

SECTION 1. None but members of the International Typographical Union shall be permitted to operate typesetting, typecasting, linecasting, phototypesetting or material-making machines and all devices used to process the product emanating from said machines. None but members shall be permitted to operate, maintain and service any mailing machinery or equipment when used on work under the jur-

isdiction of the International Typographical Union. The International Typographical Union also claims jurisdiction over the operation of all duplicating machines, such as typewriters and varitypers, etc., the product of which is a

substitute for type used in the printing and publishing process.

SEC. 2. In machine offices under the jurisdiction of the International Typographical Union, no person shall be eligible as a "learner" on machines who is not a member of the International Typographical Union. The time and compensation of "learners" shall be regulated by local unions: Provided, Local unions may grant permits to apprentices during the last two years of their apprenticeship, during which they may learn the machines, and such apprentices shall be subject to the rules and regulations of such local unions.

* * *

ARTICLE VIII—MACHINE TENDERS AND MACHINISTS

SECTION 1. All machine tenders and machinists, members engaged in the adjustment, repair and maintenance of all mechanical devices used in the performance of composing and mailing room work, shall be members of the International Typographical Union, and the local unions shall provide and maintain a scale covering such positions, and they shall at all times be under the control and amenable to all laws and regulations of said local unions. Porters shall only be allowed to melt metal and put metal around machines. They shall not be allowed to start, repair, oil, clean, change or adjust machines, or clean space bands and plungers. All work pertaining to maintenance and care of machines to be performed exclusively by machine tenders who are journeymen or apprentice members of the International Typographical Union.

* * *

General Counsel's Exhibit 20.

ARTICLE X—PRIORITY

SECTION 1. Persons considered capable as substitutes by foremen shall be deemed competent to fill regular situations, and the substitute oldest in continuous service shall have prior right in the filling of the first vacancy. This section shall apply to incoming as well as outgoing foremen.

SEC. 2. Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

• • •

SEC. 5 Any member engaged to serve the International Typographical Union, a subordinate union or to perform work in the interest of the organized labor movement, or any

member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the priority substitute competent to perform the work if one is available. The situation holders shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority sub, and considered in the category of a new situation. Upon reporting for duty full priority rights shall be restored.

Sec. 6. Available priority substitute competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I. T. U. Laws or contracts: Provided, Should a substitute with greater priority become available such substitute shall be placed on said situation: Provided, further, Local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to but not more than ninety calendar days from absence of situation holder.

• • •

Respondent Union's Exhibit 1.

May 12, 1954

SUGGESTED APPROACH FOR JOINT MEETING WEDNESDAY, May 12, 1954, OF REPRESENTATIVES OF MAILERS' UNION NO. SIX AND PUBLISHERS SIGNATORY TO THE MAILERS' CONTRACT REGARDING MAIL ROOM HIRING PRACTICES.

The purpose of the meeting is to regularize and standardize the hiring of extra personnel in the Mail Rooms of th Signatory Publishers. In this connection Section 18 of the Agreement effective December 8, 1953, is of interest; and it is quoted below as it appears on page 9 of the contract booklet:

"Section 18. Extras. Extras who work less than four (4) shifts day or night; or a combination of days and nights, as extras, in the same mailroom, in one fiscal week, shall receive fifty cents (50¢) more than the scale for each shift. A man who shall have worked in any shop five days or five nights a week for ten consecutive weeks, providing he is not substituting for an absent regular, shall be deemed a regular situation holder."

DEFINITION OF EXTRA MEN

Extra employees in the Mail Room of a Signatory Publisher are employees in that Mail Room who are neither regular situation holders nor indentured apprentices.

HIRING ORDER OF EXTRA MEN

When the employment needs of a Mail Room cannot be met from the regular situation holders and indentured apprentices of that Mail Room; or when substitutes for absent regular situation holders are required, Extras shall be employed in the following order:

1. REGULAR EXTRAS—This Group shall include all Extras who faithfully shape the Mail Room throughout the week.

2. REGULAR SITUATION HOLDERS ELSEWHERE—This Group shall include Extras who hold a situation in the Mail Room of one Signatory Publisher and who seek work on an irregular basis in the Mail Room of another Signatory Publisher.

3. CASUALS—This Group shall include all other Extras seeking work on an irregular basis.

Respondent Union's Exhibit 2.

SENIORITY OF EXTRA MEN

Effective June 1, 1954 the Foreman shall arrange Extra Men now in his employ into the three Groups above described. The order in which Extra Men are to be hired within each of the three Groups shall be based upon the original date of continuous employment in the Mail Room. Thereafter the Foreman shall maintain accurate records as to the seniority status and hiring order of all Extra Men seeking work in his office.

No Extra Man shall remain in Group 1 unless he continues to shape the shop throughout the week. No Extra Man shall remain in Groups 2 or 3 unless he works at least once in any four fiscal weeks. Men removed from one of the above Groups may re-apply for the same, or a different group, 30 days after such removal. Upon application and approval by the Foreman, the applicants shall be hired in accordance with the date of their re-applications. New applicants shall be added to the ends of the various Groups as they apply to, and are recognized by the Foreman.

Respondent Union's Exhibit 2.

May 20, 1954

MAILROOM HIRING PRACTICES

This formulation attempts to reflect and clarify agreed existing mailroom practices in hiring men other than regular situation holders (including their regular journeymen substitutes on continuous stand-by to cover their absences) and indentured apprentices. Neither this formulation, nor the Publishers' written "suggested approach" of May 12, 1954, nor the discussions had or to be had thereon shall

constitute the bargaining of new terms or a reopening of the current collective bargaining agreement to negotiate a modification of existing terms thereof.

Pursuant to the Union's undertaking under Sect. 5 to supply "competent, experienced and satisfactory" journeymen as referred to in Sects. 1 and 20-b, and as in the latter defined, the Union holds its members out to the Publishers as so duly qualified for such employment. Subject, of course, to any contrary appraisal by the Foreman as to the competency of any such members (whether regular, substitute, or extra) for available positions warranting their rejection therefor, the Union expects its qualified members to be hired and continued in employment as in the past in the order of their priority as fixed by ITU laws and by established local union precedent.

Hence, solely as among qualified Union members, no factors except adequate competence and Union priority may enter into the Publishers' selection of employees at any level of tenure.

However, as among non-Union employees in the bargaining unit and as between such men and Union members therein, the Foreman is privileged to exercise any fair judgment of selection on the Publishers' behalf, provided only that the men of his choice be competent and that he not discriminate against or in favor of any men for their membership or non-membership in the Union. Thus he may use as a basis of selection, by way of illustration only but without limitation of examples, his own evaluations of their relative degrees of competency; their actual experience at the work; the regularity of their day-to-day availability on the shape line; their original dates of continuous

(i. e., 3 or more shifts per week) employment in the particular mailroom; or any combination of two or more of these and of any other such proper factors. Except as may be used in case-by-case hirings, no such factors or particular combination of them shall be established and generally applied as a fixed standard or as a uniform term or condition of employment in any office in derogation of the contractual rights of journeymen as such.

Respondent Union's Exhibit 3.

PUBLISHERS' ASSOCIATION OF NEW YORK CITY

WILLIAM MAPEL, *President* CRANSTON WILLIAMS, *Secretary*
T. E. J. CROWLEY, *Treasurer*

BRYANT 9-2980

Times Tower, 1475 Broadway,
New York 36, N. Y.

September 9, 1954

To:
From: William Mapel

In order to assist the subcommittee currently working toward a standardized system for hiring mailroom extras, will you please send to this office the names of other than regular situation holders in your mailroom listed according to the following categories:

I. Men currently shaping at least five days per week and who worked a total of at least 156 shifts in the last six months of 1953 and first six months of 1954 combined.

Respondent Union's Exhibit 5.

II. Other men currently shaping at least five days per week but who did not work 156 shifts as provided in category I above.

III. Extras currently working in your shop who hold regular mailer situations elsewhere in the industry.

Please arrange the above names, by category, according to original date of employment, and in each instance please show the last four digits of the social security number.

Any inquiries on this subject should be cleared through Terry Cram, and the lists also should be sent to him.

Journal-American . Mirror . News . New York Times
Post . World-Telegram and the Sun . Journal of Commerce
Wall Street Journal . Long Island Daily Press . Long Island Star-Journal
Jersey Journal . Il Progresso Italo-Americano

Respondent Union's Exhibit 5.

PUBLISHERS' ASSOCIATION OF NEW YORK CITY

F. CULLEN, *Chairman* WILLIAM MAPEL, *Vice Chairman*
T. E. J. CROWLEY, *Treasurer* CRANSTON WILLIAMS, *Secretary*

BRYANT 9-2980

Times Tower, 1475 Broadway,
New York 18, N. Y.

April 4, 1951

To: The Business and Circulation Managers
From: William Mapel

This morning Messrs. W. E. Smollen and Frank O'Hara and I spent nearly two hours discussing the manpower

situation in our mailrooms. I wish to report this conversation in detail to you because it illustrates the type of relations we have had with Bill Smollen and Frank O'Hara over many, many years.

You will be interested to know that on V-J Day Mailers' Union No. 6 had 730 members. Today they have 1189 members. Because of deaths, etc. another figure is significant, namely: Since V-J Day Mailers Union No. 6 has taken into full journeymen membership 576 new members, a limited number of whom were apprentices who graduated but the vast majority of whom were non-Union men taken in by the Union primarily to meet problems arising from the Taft-Hartley Act and the fact that the Union has an open-shop contract with us.

On March 12, 1951, they took in 106 new members, including ten apprentices who graduated and 96 non-Union men who had been working with regularity in our shops.

Possibly because so much publicity has been given to the NLRB cases and court action with respect to the Drivers' Union, the executive family of the Mailers' Union plans to take a further step by way of providing Union cards to individual non-Union men. This time, the Union plans to take in somewhere in the neighborhood of 80 or 100 probationary members who will enjoy all of the working privileges and who will be made full card members as need arises in the shops or as the Union membership is reduced by deaths, etc.

The Union further plans to take in these probationary members in each shop on a strict basis of shop seniority. The Union then plans to furnish each foreman with a list of new probationary members. This would mean that the

foreman then would be expected to hire extras beginning with the probationary members unless some non-Union man who did not desire to be a probationary member had seniority over certain probationary members who shaped for work. In that event, the Messrs. Smollen and O'Hara say the Union would expect the foreman under the law to hire such a non-Union man on a strict shop-seniority basis.

One problem arises with respect to this subject of shop seniority. Apparently some of the foremen have informed Messrs. Smollon and O'Hara that the original date of employment in the shop is the only criterion for establishing shop seniority. Mr. Smollon and Mr. O'Hara told me that in their opinion continuity and regularity of service should be weighed as well as length of service predicated only on original date of employment. They point out one thing which we know so well, namely:

They do not wish to use the original date of employment alone because that would mean that some individual who had worked in a given plant perhaps one shift ten or fifteen years ago could come in and take precedence over some other individual whose original date of employment was recent but who had been working with regularity ever since his original date of employment. On that subject I told Mr. Smollon and Mr. O'Hara that I thought they should talk to their attorney and consult with the NLRB people in Mr. Doud's office. Pending such consultation I felt the matter should be brought to your attention because both Mr. Smollon and Mr. O'Hara say some of the foremen are hiring men they really do not wish to hire purely because those men had an original date of employment of many years standing.

Along this line, Mr. Smollon and Mr. O'Hara talked about some half dozen or so individuals scattered over the city who are known in the mailrooms as "bad actors". The Union officials say that some of the foremen told them they are hiring these bad actors simply because they have been told by their business offices that to do otherwise would be to encourage action by those individuals before the Labor Board.

It is the position of Mr. Smollon and Mr. O'Hara that competency is the first requisite in the hiring of men and that bad actors do not need to be hired, whether they are non-Union men, probationary men, or full-fledged Union members.

Mr. Smollon and Mr. O'Hara point out that in each shop the new probationary members will be picked on a strict shop-seniority basis. They say this may mean that they will give probationary cards to certain of these so-called bad actors. Their further point is that they feel obligated to grant these men probationary cards if their seniority entitles them to it, but they certainly do not wish to take those men eventually into full Union membership and they feel that the foreman has it completely within his power under the competency provision to make good actors out of them or else deny them employment.

Mr. Smollon and Mr. O'Hara pointed out to me that nothing they can do by way of increasing the membership of their Union will take care of the Saturday night problem. They say, however, that on other nights of the week it would be the wish of the Union that probationary members from all of the shops be given every possible break within the law in the hiring of extras. By way of explanation

they suggest that after a foreman needing extra men has exhausted his shape line insofar as men with any seniority (Union or non-Union) are concerned, then the foreman call the nearest shop or shops to inquire for any experienced journeymen who are not catching on. By this they refer to probationers.

Mr. Smollon and Mr. O'Hara make it clear that they are seeking to get as much employment as possible for the probationers but that they recognize that no probationer from an outside shop shall be entitled to employment in a shop where there is shaping a competent and satisfactory individual—Union or non-Union—with any superior seniority whatsoever.

Mr. Smollon and Mr. O'Hara told me that they visited most of the shops on Tuesday or Tuesday night, April 3, and had asked the foremen to furnish promptly to the Union lists of extras numbered in order of shop seniority.

It will be observed from the foregoing that what has been done by the Union by way of taking in new members and what is contemplated constitute a completely unilateral action. I asked Mr. Smollon and Mr. O'Hara what they sought to obtain from the Publishers. Their answer was in two parts:

1. They feel that the Publishers should see to it that their foremen do not hire, and thereby accumulate additional seniority for, trouble makers, whether they be Union or non-Union, and

2. They wish the Publishers to instruct their foremen to call one another when extra men are needed beyond the shape line of men with seniority (Union or non-union).

Respondent Union's Exhibit 5.

Finally, Mr. O'Hara and Mr. Smollon raised the problem created by apprentices being called into the Armed Services. Along with this problem they pointed out that they are seeking to upgrade certain apprentices and give them journeyman cards after they have completed two years of apprenticeship and have attained their 21-year majority. In certain instances it will be necessary for the Publishers to join with the Union to bring this about because of I. T. U. apprenticeship provisions.

Concerning the boys who are going to war as well as those who are upgraded to journeymen status, Mr. Smollon and Mr. O'Hara recognize the right of the Publishers at all times to have the full complement of apprentices, but they point out that in their opinion this should be restricted to one replacement per individual. They say that if we continue to replace every apprentice who goes to the service we well may end up with three or four individuals having been assigned to one given apprenticeship; and they further point out that under the G. I. Bill of Rights upon returning from the service such boys would be entitled to restoration of jobs they held at the time of their induction. This, Mr. Smollon and Mr. O'Hara say, might mean that in some shops a few years from now we might end up with several times as many apprentices as the contract permits. They know of the provision under the Pressmen's contract where temporary apprentices are picked when a registered apprentice is inducted, but they point out that in the Mail room there is no equivalent reservoir of boys. Consequently, to provide temporary apprentices they would have to go outside the Mail rooms to find qualified young men.

Respondent Union's Exhibit 6.

In order to save time, I am asking Mrs. Palmer to put this dictation directly on a stencil and send this memorandum, unedited, to you this afternoon because I should like to ask that it be discussed at the monthly meeting of the Association tomorrow.

Mr. Smollon and Mr. O'Hara understand that I am sending the unedited memorandum and they understand that I am sending a copy to them in case in any way I have not reflected exactly what they said to me.

WM-m

Copies: Messrs. W. E. Smollon
Frank O'Hara

Herald Tribune . Journal-American . Mirror . News . New York Times
Post . World-Telegram and Sun . Brooklyn Eagle . Journal of Commerce
Wall Street Journal . Long Island Daily Press . Long Island Star-Journal
Jersey Journal . Il Progresso Italo-Americano

Respondent Union's Exhibit 6.

DAILY NEWS

Men Shaping Regularly 3 or more days per week	*Men Shaping 3 Days or Less Per week*	*Men Shaping 2 days or Less*	*Order Men Put to Work*
R. Maresco	G. Musella	B. Randell	R. Maresco
W. Fischer	Peter Freda	Tarnow	B. Randell
S. Modrzewski	J. Conway	Hoffmeyer	W. Fischer
McCarthey	C. Matizgeek	J. Koutsikas	S. Modrzewski
F. Cornish	R. Freda	B. Karter	McCarthy
E. Sisk (In Service)	Paul Freda	F. Fischer	F. Cornish
G. Redden ??	I. Carlin	L. Karlan	Tarnow
J. Cohl		J. Montegary	Hoffmeyer
J. Tobin		C. Connolly	G. Musella
G. Musella			Peter Freda
J. Parajos			E. Sisk
J. Peltzman			G. Redden
J. Pignoni			J. Conway

Respondent Union's Exhibit 6.

Men Shaping Regularly 5 or more days per week	*Men Shaping 3 Days or Less Per week*	*Men Shaping 2 days or Less*	*Order Men Put to Wo*
G. Parajos			J. Cohl
J. Ortega			M. Tobin
N. Gerson			F. Musella
W. Lynch			Matizgeck
P. Benson			R. Freda
J. Lavietes			Paul Freda
J. Reres			A. Parajos
J. Maloney			M. Peltzman
A. Piccolo			E. Pignoni
R. Hoffman			J. Montegary
W. Gorman			G. Parajos
M. Simon			J. Ortega
F. Haynia			N. Gerson
R. Tirelli, Jr.			J. Koutsikas
F. Monaghan, Jr.			W. Lynch
Messerschmidt			I. Carlin
			P. Benson
			J. Lavietes
			J. Reres
			C. Connolly
			W. Karter
			Maloney
			F. Fischer
			A. Piccolo
			Hoffman
			Gorman. W.
			M. Simon
			L. Karlan
			F. Haynia
			R. Tirelli
			Monaghan
			Messerschmid

Respondent Union's Exhibit 7.

QUESTIONNAIRE

Name: Burton E. Randall. (Print) Age: 37. Date of Birth: 9/9/1918.

Address: 34 Center Drive. City: Syosset. Zone: ..... State: N. Y.

Social Security Number: 057-12-5789.

Where first employed at Mailing Trade: N. Y. Daily News.

Number of years at Mailing Trade: 10.

How many shifts do you appear for work each week? 2 to 3. At which shops? News.

How many shifts do you work each week? 2 to 3. At which shop? News.

Will you follow the Mailing Business exclusively? Yes [x] No [ ]

How many days vacation did you have in: 1953: 6 1954: 7 1955: 7.

Have you at present any disease or physical impairment that prevents you from working at any branch of the Mailing Trade? No.

To the best of my knowledge the above statements are true.

Date: 4/6/56. Signature: BURTON E. RANDALL.

THIS QUESTIONNAIRE WILL BE FULLY INVESTIGATED

(Union Label) 187

Respondent Union's Exhibit 8.

For the information of -
September 2-, 1957
Sidney Sugarmen, Esq.

From: The Office of -
The Publishers' Association
of New York City

June 25, 1957

Minutes of the Joint Apprenticeship Committee—Mailers
New York Mailers' Union No. 6 and
Publishers' Association of New York City

Union Members	*Publisher Members*
Richard Irving	Donn M. Purdy
Louis J. Freda	Joseph R. Rec

The Committee held a series of five meetings to promulgate a training program for apprentices, pursuant to Section 27-b of the subsisting collective bargaining agreement. The parties at the third meeting agreed to postpone the date of promulgation to July 1, 1957.

Attached to and incorporated as a part of these minutes is the program which the Committee has approved.

At the fifth meeting, held June 25, 1957, the Committee approved the selection of Harold Taylor, Jr., for apprenticeship at the New York Journal-American, effective July 1, 1957.

For the Union:	For the Publishers:
RICHARD IRVING	DONN M. PURDY
RICHARD IRVING	DONN M. PURDY
LOUIS J. FREDA	JOSEPH R. REC
LOUIS J. FREDA	JOSEPH R. REC

Respondent Union's Exhibit 8.

June 25, 1957

Training Program for Apprentices—Mailers

This training program of mailroom apprentices is intended to include thorough training under journeymen on all phases of mailroom work outlined and specified in the jurisdiction section of the agreement, including all phases of maintenance and repair of mailroom equipment.

1st Year

1. Acquaintance with mailroom tools and materials
2. Cleaning paste pots
3. Mixing Paste; preparing pots, brushes, and rope for journeymen
4. Opening liners
5. Stamping office copies
6. Proofing galleys of type lists
7. Cutting tags
8. Tagging and bagging mail
9. Folding newspapers
10. Counting odds

2nd Year

1. Duties prescribed for the first year
2. Limited periods of hand inserting
3. Limited periods of manning escalators and delivery ends of presses, as relief, but not to exceed 40 minutes per shift or two 20-minute periods
4. Counting papers for journeymen
5. Single wrapping
6. Combing out wrappers
7. Dissecting

Respondent Union's Exhibit 8.

3rd Year

1. Duties prescribed for the 1st and 2nd years
2. Wrapping clubs
3. Wrapping express and mail rolls and bundles
4. Hand bundling for limited periods
5. Limited periods of manning escalators and delivery ends of presses, as relief, but not to exceed one hour per shift or two 30-minute periods.

4th Year

1. Duties prescribed for prior years
2. Manning of escalators and delivery ends of presses
3. Learning to operate Speed-au-mats, Addressographs, Graphotypes, Pollard-Allings, and Cheshires
4. Correcting stencils, proofiing, running mail lists, stripping, pasting, and spooling galley lists

5th Year

1. Duties prescribed for prior years
2. Operating Dick Mail and Horton Stamping machines
3. Assembling and operating hand stamping machines
4. Stamping club lists, dealer and agent wrappers
5. Laying out and marking wrappers; routing mail, baggage, and express

6th Year

1. Duties prescribed for prior years
2. Operating hand, semi-automatic, and automatic tieing machines
3. Preparing rope and wire, oiling and cleaning, wiring, and adjusting breakdowns on tieing machines
4. Operating all types of inserting machines

Respondent Union's Exhibit 9.

5. Oiling, cleaning, and adjusting breakdowns on inserting machines
6. Reading, marking, and checking blowers and wrappers
7. Delivery clerk, tallying and passing publications
8. Complete review and checkup of all mailer operations

Respondent Union's Exhibit 9.

MAILER APPRENTICES FROM JANUARY 1, 1947 THROUGH SEPTEMBER 30, 1957

Name	*Date Started Apprenticeship*	*Apprentice Register No.*	*Date Obligated As Journeyman*	*Journeyman Register No.*
incent Bader	11/ 1/51	None	Left Business	
ugene Baldwin	6/28/48	14115A	3/12/51	123432
eorge Bannon	1/15/43	7011A	3/10/47	81114
rederick Berndt	12/14/47	13430A	1/12/53	124326
illiam P. Binckes	10/11/51	None	12/13/54	129738
illiam J. Connell	10/26/53	None	1/ 9/56	133654
oseph Connors	10/ 2/49	None	10/12/53	69331
ernard Curtis	12/15/46	None	12/ 8/47	84884
ohn P. Dooley	6/27/50	None	12/14/53	87517
ames Doucette	7/ 1/48	14332A	3/12/51	123431
ohn J. Dowd	3/ 8/48	13536A	3/12/51	123430
aniel Dunne	3/ 8/49	14829A	11/12/51	29068
ohn Dunnigan	12/11/50	None	6/13/55	131258
ester Ehrhardt, Jr.	12/ 8/47	9733A	12/ 8/52	38475
ohn Englert	2/10/48	13429A	3/12/51	123429
obert J. Fallon	7/ 1/49	None	12/13/54	129739
rome Farber	2/ 2/48	13428A	3/12/51	123428

Respondent Union's Exhibit 9.

MAILER APPRENTICES FROM JANUARY 1, 1947 THROUGH SEPTEMBER 30, 1957

Name	*Date Started Apprenticeship*	*Apprentice Register No.*	*Date Obligated As Journeyman*	*Journeyman Register No.*
John Fitzgerald	12/20/48	14442A	12/ 8/52	38669
Robert Fogarty	2/ 2/53	None	6/ 9/57	139837
Lawrence Freda	2/10/48	10174A	9/ 8/52	24315
Warren E. Glaudel	12/10/47	10455A	3/12/51	123428
Stanley Gross	6/30/50	None	6/14/54	127941
Robert Guilfoyle	9/15/53	None	Left Business	
Joseph Hauser, Jr.	3/ 1/54	None	6/10/56	135447
Robert Jones	6/29/48	14118A	4/12/54	127433
Edward Kissel	9/10/46	None	3/ 8/48	75102
Philip Kissel Jr.	3/12/51	None	3/12/56	134419
Richard Koenig	7/ 6/48	14117A	3/12/51	123427
John Lynch	6/29/48	14116A	9/14/53	125743
Terrence McGuiness	12/ 9/52	None	5/ 9/55	130929
Thomas McGuiness, Jr.	10/12/50	None	2/14/55	130183
Walter McMahon, Jr.	10/ 1/46	11882A	10/ 8/51	10007
John Martin	7/ 1/48	14333A	10/14/54	129052
Richard Mitchell	9/ 1/43	8988A	10/11/48	90494

MAILER APPRENTICES FROM JANUARY 1, 1947 THROUGH SEPTEMBER 30, 1957

Name	*Date Started Apprenticeship*	*Apprentice Register No.*	*Date Obligated As Journeyman*	*Journeyman Register No.*
John V. Nagle	7/15/46	None	12/ 8/47	94967
George Neilson	3/21/54	None	6/10/56	135488
James Perota	10/ 7/49	None	12/14/53	90117
Joseph Powers	11/17/46	None	Left Business	
Edward R. Quinn	5/11/48	13727A	3/12/51	123376
Joseph Ray	11/10/45	None	12/ 8/47	96132

Respondent Union's Exhibit 11a.

Name	*Date Started Apprenticeship*	*Apprentice Register No.*	*Date Obligated As Journeyman*	*Journeyman Register No.*
manuel Rice	11/ 1/47	13431A	3/12/51	123379
ugene A. Rich	12/24/51	None	2/ 8/54	110858
mes Sammis	7/28/48	14119A	3/12/51	123381
wrence Schlatter	9/15/46	None	12/ 8/47	69460
illiam E. Smollon, Jr.	7/15/46	11202A	6/13/49	56105
lward Sowaal	6/ 3/46	10890A	10/ 9/50	120682
ber H. Steffes	7/19/55	None	9/ 8/57	140927
niel Taylor	10/ 9/51	None	4/12/54	127434
orge J. Valentine	12/10/51	None	12/14/53	93504
omas J. Ward	3/10/47	None	11/ 8/48	58219
rt H. Weinel	9/ 4/51	None	1/11/54	11906

Page Three

Respondent Union's Exhibit 11a.

February 2, 1953

William Little, Esq.
c/o National Labor Relations Board
Region 7
1740 National Bank Building
Detroit 26, Michigan

Re: Publishers Association *et al.*
Case Nos. 2-CA-250, 2-CB-48

Dear Bill:

I have lately been approached by several "Saturday night boys" whose separate charges you had dealt with directly. They tell me that since the Board's order they have regularly been jumped on the shape-line by any A or B boy from another newspaper. They want to know whether they are not protected in this situation by the Board's

blanket order against discrimination. Is that not your understanding, as it is mine? Was it contemplated that for these purposes a city-wide seniority list of A and B boys would have preference in all events as against this group?

If you concur in my view that they are protected I will merely refer them to Clem Cull or whoever may now be in charge of this situation for possible correction.

I hope you are well and that you will keep to your word of being in touch with me some day when you have the time in town.

Sincerely yours,

SS:nc

Respondent Union's Exhibit 11b.

NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

1740 National Bank Building
Detroit 26, Michigan

February 4, 1953

Sidney Sugerman, Esquire
295 Madison Avenue
New York 17, New York

Re: Publishers Association, *et al*
Cases Nos. 2-CA-250 and 2-CB-48

Dear Sid:

I have received your letter of February 2, 1953. The situation with regard to the Saturday-night boys is as follows:

Respondent Union's Exhibit 11b.

It is possible that their status was discussed with the Publishers during the course of negotiations leading towards the settlement, however, I have no specific recollection of such a discussion. I do know, however, that if I gave any indication of a position with regard to the Saturday-night boys, I would have indicated the opinion that the Publishers were free to apply industry-wide seniority, which is in effect what the boys are complaining of. I did advise the Saturday-night boys repeatedly in my discussions with them that I could see no illegality in preferring A and B boys, *regularly employed* at other papers over them. It was a constant source of controversy between us and I told them many times that we had repeatedly attacked industry-wide seniority in the cases involving the drivers and the Board had repeatedly rejected our contention, and that for that reason I did not propose to attack it in the Pressmen's case. I repeatedly told them that I could see nothing wrong under controlling Board precedent with the employer giving preference to boys regularly employed at another newspaper over them. My position to this effect had been communicated to my superiors prior to Board approval of the stipulation over the objections of the Saturday-night boys.

In fact, as I am writing this letter and my mind is becoming refreshed concerning the incident, I am more and more convinced that I at least told Joe Dwyer that it was my opinion that regular boys could be preferred over Saturday-night boys irrespective of their seniority. I am not certain, however, that at that time I was discussing boys from other papers. However, my hunch is that since we covered all aspects of the hiring situation in our various discussions that this must have come up at some time or other.

I am positive that after we had lost the industry-wide seniority cases in the driver's case if I expressed any opinion at all on the subject I indicated that preference for regularly employed boys of other papers over Saturday-night boys would be permissible. All of this I suppose is a round-about-way of answering your question of whether or not it was contemplated that the city-wide list of A and B boys would be given preference over the Saturday-night boys. It was certainly my contemplation and my understanding at the time of the execution of the stipulation that the Publishers and the union were going to do just that and that such conduct would be permitted under the Board's decision authorizing industry-wide seniority.

I trust you are well and I definitely will make it a point to see you on one of my forthcoming trips to the city.

Sincerely yours,

WM. T. LITTLE
WILLIAM T. LITTLE
Chief Law Officer

cc: Clement P. Cull, Field Examiner
N.L.R.B., Second Region

Respondent Union's Exhibit 12.

April 23, 1951

Mr. H. Cousens
% Daily News
220 E. 42nd St.
New York, N. Y.

Dear Sir & Brother:

Enclosed please find copy of hiring list you supplied to this office. I understand that the names are in the order that you hire these men for extra work and will continue to hire in this order provided they appear for work regularly and perform their duties to your satisfaction.

Will you kindly tell those on *this list* that the Union is issuing Probation Cards on May 1st between 12 noon and 4 P. M.

With best wishes, I am,

Fraternally yours,

WILLIAM E. SMOLLON
President
N. Y. Mailers' Union No. 6

WES:TRS
oeiu/153
enc.

CC: Mr. Ray Brandow, Chairman, Daily News

Respondent Union's Exhibit 13.

January 8, 1951

PROPOSED MEMBERSHIP PROGRAM

Your Officers and Membership Committee submit the following program for increasing the membership of the Union and urge that you adopt the program as outlined below:

1. The Union Officers endeavor, with the cooperation of employers, the upgrading of apprentices who have completed at least two years apprenticeship and are 21 years of age or older; and all other apprentices on record as of February 1st, 1951 be given membership when they reach their 21st birthday after serving 2 years as apprentice.

2. Membership be immediately granted to present employees of the Journal American Night, News, Mirror, Times and Herald Tribune in sufficient numbers to cover the present requirements.

3. Probationary membership be granted to a limited number of persons who are employed solely at the Mailing Trade and whose record of employment shows that they consistently seek and obtain at least three or more days a week in one office and have a continuous record of at least one year in any one office.

4. Identification cards to be issued bearing the number indicating holders position on the line in office where employed. The card not transferrable to any other office and the holder to have no standing in any other office, except in cases where office is short of help and all available probationary members in the office have been employed.

Respondent Union's Exhibit 13.

5. All probationary members to pay the sum of $3.00 a month for the cost of issuing, processing and otherwise caring for the records of Probationary members.

6. All persons who accept conditional membership must sign a stipulation agreeing to terms of issuance and guaranteeing to save harmless from any course of action whatsoever The New York Mailers' Union No. 6. Also, to make no claims of any nature for relief usually accorded to regular members.

7. In order that the rights of all persons may be protected to the fullest extent the complete records of any person filling the above requirements and presently in the Armed Services of the United States or United Nations shall be placed on file in the Union office for future action.

8. Officers and Membership Committee recommend approximately 100 applications for membership be issued and approximately 100 Probationary Cards be issued as outlined above.

Intervenor's Exhibit 6.

SAMPLE

CONSTITUTION AND BYLAWS

(Union Label)

PUBLISHED JANUARY, 1955

by the
International Typographical Union
Typographical Terrace
P. O. Box 428
INDIANAPOLIS (6) INDIANA

IMPORTANT NOTE

This is a SAMPLE Constitution and Bylaws published for the assistance of newly formed local unions in developing a local Constitution and Bylaws which can be approved by the President of the I. T. U. in accordance with the provisions of Section 3, Article V, I. T. U. Bylaws. Attention is specifically directed to the provisions of Section 1, Article I, I. T. U. Constitution in which it is stated in part: "* * * to subordinate unions is conceded the right to make all necessary laws for local government which do not conflict with the laws of the International Union."

Some of the enclosed suggestions as to provisions for local constitutions and bylaws, such as those providing for the exclusive employment of members of the union and the employment of applicants for membership on permit pend-

ing action on such applications, may be considered to be violations of anti-labor provisions of the Taft-Hartley Law under certain circumstances. Officers and members are cautioned to refrain from the enforcement of such laws where this is true. In Canada there is no Taft-Hartley Law. In many local jurisdictions in the United States there are printing establishments in which the character and amount of interstate business is insufficient to bring them and their employees within the scope of the Taft-Hartley Act and under surveillance of the NLRB. In such shops, unless there is a state law to the contrary, these and similar local laws may be enforced. However, the facts as to such class of shops must first be definitely verified.

WOODRUFF RANDOLPH,
President.

SAMPLE

CONSTITUTION
AND
BYLAWS

(Union Label)

PUBLISHED JANUARY, 1955
by the
International Typographical Union
Typographical Terrace
P. O. Box 428
INDIANAPOLIS (6) INDIANA

Intervenor's Exhibit 6.

PREAMBLE

To establish and maintain by collective action an equitable scale of wages, and protect ourselves from sudden or unreasonable fluctuations in the rate of compensation for our labor; to defend our rights and advance our interests as workingmen; to create an authority the seal of which shall constitute a certificate of character, intelligence and skill; to build up an organization where all worthy members of our craft may participate in the discussions of those practical problems upon the solution of which depends their welfare; to encourage the principle and practice of conciliation in the settlement of differences between employer and employee; to incite all honorable efforts for the attainment of increased skill in workmanship and the betterment of our conditions, we, the undersigned journeymen members of ....., do enact, declare and establish the following Constitution and Bylaws for our government.

CONSTITUTION

ARTICLE I

NAME

Section 1. This organization shall be known as ..... TYPOGRAPHICAL (or MAILERS) UNION No. ..., and shall be subordinate to the International Typographical Union of North America.

Intervenor's Exhibit 6.

ARTICLE II

Section 1. The objects of this Union shall be to maintain proper wages, hours and working conditions for the benefit of our members; to encourage and promote competency, good fellowship and fraternity; and use every endeavor to advance the moral, social and economic welfare of all members of the International Typographical Union.

Section 2. It is also the object of this Union to promote harmony in the printing industry between employers and employees by adjudicating differences through conciliatory means and to develop a spirit of co-operation among all workers in the printing industry.

ARTICLE III

MEMBERS AND THEIR DUTIES

Section 1. This Union shall be composed of practical printers, mailers, and other employees (male or female) of the printing and kindred trades as are eligible to membership under the laws of the International Typographical Union, known to be competent workers and of good character, who shall sign this Constitution and comply with the rules and regulations of this Union.

(Subordinate unions have no authority to confer upon any person honorary membership. Conventions only can confer such honorary membership in the International Typographical Union.)

Section 2. It shall be the duty of members to comply with contracts, agreements and laws of the local and International Typographical Union. Each member shall pay

dues and assessments as is provided in the laws of the local and International Typographical Union, and no member shall be considered in good standing, or entitled to a voice or vote in the proceedings of this Union who does not have a current working card, or who is in arrears for dues, assessments or other financial obligations to the Union.

ARTICLE IV

OFFICERS AND THEIR DUTIES

Section 1. The elective officers of this Union shall consist of a President, Vice-President, Recording Secretary, Secretary-Treasurer, Sergeant-at-Arms, a Board of Auditors to consist of three members, Board of Electors, delegate (one or more) to the International Typographical Union, and delegates to local, state and other trades union organizations.

THE PRESIDENT

Section 2. It shall be the duty of the President to preside at all meetings of the Union, enforce rules of order, preserve decorum and require obedience to the Constitution and Bylaws, countersign all orders on the treasury authorized by the Union or Executive Committee, appoint all special committees, fill all vacancies unless otherwise provided for, and perform such other duties as may pertain to his office. He shall have the deciding vote on any question in case of a tie vote. He shall correct all violations of law of the International Union in the jurisdiction and when unable to do so, he shall refer the matter to the local union for action.

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THE VICE-PRESIDENT

Section 3. The Vice-President shall be chairman of the Executive Committee and shall perform all the duties of the President in case of his absence, death, resignation or inability to attend to the duties of his office. In case of the absence of both President and Vice-President, a President *pro tem.* shall be elected.

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THE RECORDING SECRETARY

Section 4. It shall be the duty of the Recording Secretary to transcribe the proceedings of the Union in a book to be especially provided for that purpose; to keep a book wherein shall be copied the constitution, bylaws, scale of wages and rules of order, a part of said book to be set aside for the purpose of entering all amendments; he shall notify each chapel, by posting notice in a conspicuous place, of all regular and special meetings of the Union, notify in writing members appointed to serve on special committees, should they be absent from the meeting at which they were appointed; furnish members against whom charges have been preferred with a copy of the same as provided by International Typographical Union law; keep charge of all books, papers, etc., belonging to the Union, under his care during his term of office, and deliver the same to his successor. All necessary expenses incurred by him in the discharge of his official duties shall be defrayed by the Union after having been authorized by a majority of the members present at any regular meeting.

THE SECRETARY-TREASURER

Section 5. It shall be the duty of the Secretary-Treasurer to collect initiation fees, dues, assessments and fines,

keeping, in a book provided for that purpose, correct account of all receipts and expenditures; he shall also keep a correct list or roll-call of all members, also a record of those withdrawing by card or in other manner ceasing to be members during his official term; issue permits to applicants for membership on receipt of initiation fee, and to members who deposit a traveling card duly attested; furnish a traveling card to members who desire to leave the jurisdiction of this Union; report at each regular meeting all moneys collected since the previous meeting; report to the Union all members in arrears for dues, fines or assessments. He shall pay all bills ordered by the Union and transmit the Union's per capita tax, the old age pension and mortuary assessments and any other moneys due to the Secretary-Treasurer of the International Typographical Union monthly. He shall submit his books, etc., to the Board of Auditors for examination whenever required to do so. He shall also receive all letters and

communications addressed to this Union, answering the same as required or as the Union may direct. He shall furnish the Secretary-Treasurer of the International Typographical Union with the names, addresses and telephone numbers of all officers of this Union immediately upon election to office or when any change in officers shall occur; he shall furnish him with the names of all applicants for membership, or of the suspension or expulsion of any member, specifying the reason therefor; make out and forward to the officers of the International Typographical Union all reports or statements, as called for or required by the International Union laws. He shall give bonds as is required by the laws of the International

Intervenor's Exhibit 6.

Typographical Union. He shall deliver to his successor in office all books, papers, etc., in his possession belonging to the Union. All necessary expenses incurred by him in the discharge of his official duties shall be defrayed by the Union when authorized by a majority of the members present at any regular meeting. In consideration of his services, he shall receive ..... dollars ($.....) per month and be exempt from local dues.

THE SERGEANT-AT-ARMS

Section 6. It shall be the duty of the Sergeant-at-Arms to attend at the door and admit no one to the meeting except members, unless by permission of the Union; if in doubt, the Sergeant-at-Arms may require the applicant for admission to exhibit his card. He shall perform such other duties as the Union may require.

THE EXECUTIVE COMMITTEE

Section 7. The Executive Committee shall consist of five members, four of whom shall be elected by majority referendum vote as provided in the Bylaws for the election of other local officers. The Vice-President shall preside as Chairman of the Committee. Officers other than the President and Secretary-Treasurer may also be elected to serve on the Executive Committee.

• • •

The Executive Committee shall meet upon the call of the chairman, and at such times as the bylaws

may provide; during the recess of the Union it may decide questions in dispute between members or between

members and employers and take such action as is deemed best (except authorizing strikes) in matters involving the interests of the Union; it shall decide questions referred to it by the Union and the decision shall be binding until reversed by the Union; it shall receive from the Secretary the names of all candidates for membership, and at the regular meeting immediately following present to the Union a report in writing, setting forth the merits of said candidates; it shall take charge of and manage all funerals of deceased members when requested.

BOARD OF AUDITORS

Section 8. This Union shall elect a board of Auditors, or select expert accountant or accountants, whose duty it shall be to examine all the books and records of this Union's financial officers for the quarterly periods May-June-July; August-September-October; November-December-January; February-March-April, and report to the Secrefary-Treasurer of the International Typographical Union by the 20th of the month following the end of the quarter, the condition of funds and accounts, the number of members in good standing, number initiated, expelled or suspended, admitted or withdrawn by card for each month, the amount of fiduciary officers' bonds, the amounts expended in sick relief, funeral benefits, or in any form of charity, together with such other information as the Executive Council may deem necessary. A majority of the auditors, or the expert accountant or accountants, must be present at the examination of accounts (which shall include a visit to the bank and personal verification of proper bank balance), and no member of the committee, and no accountant, shall attach his or her signature to a

report unless such member or accountant shall have personally participated in such examination. The President of this Union shall sign the quarterly report attesting that the auditing committee or certified accountant has audited the books as stated therein. The Board of Auditors shall perform such other duties as are prescribed by the laws of the International Typographical Union or this Union.

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Article V

ELECTION OF OFFICERS

Section 1. The election of officers of this Union shall be held on the ..... day of ..... each year.

Section 2. At the regular meeting in ..... nomination of candidates for all the officers to be filled by election shall be made.

Section 3. There shall be elected three members, who are not in nomination for any office, to act as a board of election; they shall be in full control of the conduct of the election, and at the first regular meeting thereafter shall make written report of the result, together with the vote for each candidate. The President shall then announce the successful candidates.

Section 4. Written or printed ballots only shall be used, and the voter shall be required to exhibit his current Working Card before casting his ballot.

Section 5. In case of no result or contest the matter shall be settled at the next regular meeting of the Union.

Intervenor's Exhibit 6.

Section 6. Elections for delegates to the International Typographical Union and for all International officers shall be held according to International Typographical Union laws governing elections.

Article VI

INSTALLATION OF OFFICERS

Section 1. The installation of officers shall take place at the next regular meeting after election. The elected officers shall range themselves in front of the President's desk and subscribe to the following pledge, which he shall dictate to them:

I (give name) do hereby pledge myself to faithfully perform the duties of the office to which I am elected, to the best of my ability, and for the benefit and honor of the Union.

Article VII

COMMITTEES

Section 1. All Special Committees shall be appointed by the President, unless otherwise ordered by the Union.

Section 2. The President shall appoint (or the Union elect) a label committee, whose duty it shall be to promote a demand for the use of the label on all printed matter. It shall also be the duty of this committee to procure information as to where union-labeled goods may be purchased.

Section 3. The President shall appoint (or the Union elect) an apprentice committee of three members whose duties shall be to inquire into the educational qualifications of applicants for apprenticeship, examine each apprentice to ascertain if he is meeting the necessary requirements called for in the several classes of work specified for each year of his apprenticeship, and if, after such examination, the committee finds the apprentice has not made satisfactory progress, it shall so report to the Union for such action as it is deemed proper to take; to require the attendance of apprentices at continuation and other schools and report any delinquency to the Union; to compel all apprentices to complete the I. T. U. Course of Lessons in Printing.

Section 4. A sanitation committee of three members shall be appointed whose duty it shall be to visit, at least twice a year, the different newspaper and job offices in this jurisdiction, and at the next regular meeting make a report of their findings as to sanitary conditions of places visited.

Section 5. The President shall appoint (or the union elect) a Political Action Committee to cooperate with city, county and state L. L. P. E. organizations; to check and encourage registration; to study and make known voting records of political candidates, and to co-operate with other groups working to repeal the Taft-Hartley law and oppose anti-labor state legislation.

Article VIII

Resignations and Removal from Office

Section 1. All officers of this Union shall have the privilege of resigning at any time: *Provided*, they shall

have paid all dues, assessments, or fines, and that no charges whatever exist against them.

Section 2. In event of the resignation of the Secretary-Treasurer, the Board of Auditors or an ex-

pert accountant or accountants selected by the Union shall immediately examine his books, and if his accounts are found correct, his resignation shall be accepted, provided he turns over to his successor *in the presence of* the President (or Vice-President in the absence of the President) all books, money and other property of the Union then in his possession.

Section 3. Any elected officer may be impeached for violation of his pledge, or for infringement of the provisions of the Constitution and Bylaws; but all charges preferred against such officer shall be filed and his trial conducted as provided in the laws of the International Typographical Union.

Section 4. An appointive officer may be removed by the President in his discretion, subject to approval by the Union.

Article IX

ACCUSATIONS AND TRIALS

Section 1. All charges against members of this Union must be filed, and the trial of the accused conducted, in the manner provided in the laws of the International Typographical Union.

Intervenor's Exhibit 6.

Article X

REGULAR AND SPECIAL MEETINGS.

Section 1. The Regular meetings of this Union shall be held on the ..... of each month.

Section 2. Special meetings may be called by the President in his discretion, and shall be called by him on request of the Executive Board or the written request of any eight members of the Union holding a current working card. No business shall be transacted at such special meeting other than specified in the call therefor.

Section 3. At any regular or special meeting ..... members shall constitute a quorum for the transaction of business, except in cases otherwise provided by the Constitution and Bylaws.

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Article XI

DISSOLUTION OF THE UNION

Section 1. This Union shall not have power to dissolve itself, except in a manner provided in the laws of the International Typographical Union.

Article XII

SCALE OF PRICES

Section 1. It shall require a majority vote of six-month members in good standing, present and voting, to change the established scale of prices. Said vote shall be taken by secret ballot, at a meeting of which all members have been duly notified.

Intervenor's Exhibit 6.

Article XIII

STRIKES

Section 1. In the event of disagreement between an employer and members of the Union concerning conditions of employment or enforcement of the Scale of Wages, a meeting of the Union shall be immediately called, of which all members shall be constitutionally notified.

Section 2. In cases of difficulties arising between employers and members of the Union, which can not be amicably adjusted by conciliation and which may lead to a strike, the President of the International Typographical Union shall be notified, as required by International law.

Section 3. A majority vote by secret ballot of six-month members (exclusive of proprietor members and those not working at the trade) in good standing and entitled to vote shall be necessary to order a strike, and no strike shall in any event be ordered unless the strike laws of the International Union have been complied with in every particular.

Article XIV

NOT ENTITLED TO VOTE

Section 1. No member who is in arrears for dues, assessments or fines or who is otherwise financially

obligated to the local or International Union shall be entitled to a voice or vote on any measure considered by the Union or to participate as a candidate or otherwise in the election of officers.

Intervenor's Exhibit 6.

Section 2. A local discipline committee shall be established in accordance with the provisions of International Union law. This committee shall investigate minor infractions of union law, the scale of prices and all cases of delinquency on the part of individual members. The committee may, after hearing, where all interested parties are afforded a fair opportunity to be heard, impose fines of not more than one day's pay for any violation: In the case of delinquency such members may be fined one day's pay at his regular scale for each day he or she is delinquent in payment of proper dues, assessments, or fines levied by action of the union.

Article XV

CANDIDATES FOR INITIATION

Section 1. Candidates for initiation shall subscribe to the following obligation, prescribed by the International Union, which shall apply only to matters pertaining to the printing industry.

OBLIGATION

I (give name) hereby swear (or affirm) that I will, in good conscience, and to the best of my ability, comply with and perform the Duties of Membership of the International Typographical Union, all of which shall in no way interfere with any duty I owe to God or my country.

DUTIES OF MEMBERSHIP

Every applicant for membership shall be required to sign and thereby pledge adherence to the statement of Duties of Membership as provided in the laws of the In-

ternational Union. No application shall be acted upon until this requirement has been met. The signed statement shall be filed with the application.

Section 2. Every member, upon admission, shall sign the Constitution and Bylaws.

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Article XVI

ALTERATIONS AND AMENDMENTS

Section 1. This Constitution may be amended by a majority referendum vote or by a three-fourths majority at any regular meeting consisting of not less than three-fourths of the members of the Union or by a three-fourths vote of members present, if one month's previous notice of the particular article or section to be amended has been given.

Article XVII

IN EFFECT

Section 1. This Constitution shall go into effect and be in force from and after .....

(insert date).

Article XVIII

Section 1. The constitution, bylaws, general laws, resolutions and decisions of the International Typographical Union are hereby made a part of this Constitution.

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Intervenor's Exhibit 6.

BYLAWS

ARTICLE I

HOUR OF MEETING

The hour for the regular meeting of this Union shall be .....

ARTICLE II

APPLICATIONS FOR MEMBERSHIP

Section 1. Application for admission to membership in the Union shall be made to the Secretary-Treasurer, who, with permission of the Executive Committee, may grant a working permit, good until such time as the application can be acted upon by the Union, upon receipt of the initiation fee and application upon which all questions have been answered and required information given. (Working permits may not be granted in any jurisdiction where provisions of the Taft-Hartley law are applicable.)

Section 2. All applications filed with the Secretary-Treasurer must be presented to the Union for consideration and action. *Provided,* Such application shall not be considered if rejection by any local union shall have occurred within six months, except by permission of the International President.

Section 3. Each application for membership shall be accompanied by an initiation fee of ..... dollars ($.....), plus the International Typographical Union registration fee as provided by laws of

the International Typographical Union, which registration fee shall be transmitted to the Secretary-Treasurer of the International Union in the event of the applicant's election to membership. No person shall be admitted to membership who shall not have had at least six (6) years' experience at the trade, except as provided in the laws of the International Typographical Union. All applications received during the preceding month shall be read at the regular meeting of the Union and shall be referred to the Executive Committee which shall make the necessary

investigations and report thereupon at the next regular meeting. Where there is any doubt as to the previous record of the applicant, his name shall be published in The Typographical Journal.

Section 4. The same rigid examination as to the competency and physical fitness of applicants for journeyman membership shall be made by the Executive Committee of this Union as is made with respect to the competency and physical fitness of apprentices transferred to the journeyman roll. The physical examination shall be by a registered physician on a blank furnished by the International Union. Apprentice members are not eligible for transfer to the journeyman roll until they have completed the Lessons in Printing.

Section 5. After the report of the Executive Committee has been read, a secret ballot shall be ordered, and if three-fourths of the votes cast are favorable, the applicant shall be declared elected. By unanimous consent the President may cast the vote of the Union. Apprentice members may be transferred to the journeyman roll by majority vote.

Intervenor's Exhibit 6.

Section 6. Candidates proposed and elected failing to appear for initiation at the next regular meeting of the Union, after being notified of election as a member (except in case of sickness or absence from the city), shall be required to make another application.

ARTICLE III

TRAVELING AND WITHDRAWAL CARDS

Section 1. Any member desirous of leaving the jurisdiction of this Union shall, upon application to the Secretary-Treasurer, be furnished with the Traveling Card provided by the International Typographical Union; *Provided*, There are no unpaid dues, assessments, fines, and no pending charges, and it is further provided, That where membership is conditional on completion of the Lessons in Printing traveling cards must not be granted until completion of the Course, except by permission of the International President.

Section 2. Any member in good standing retiring

from the business may, upon application and approval of the local union, receive the Honorable Withdrawal Card provided by the International Typographical Union. The acceptance of such honorable withdrawal card exempts them from payment of all dues, and deprives them of all offices and benefits whatsoever. The holder of an Honorable Withdrawal Card may, subject to approval of the Union issuing the card and under limitations and conditions provided by I. T. U. laws, deposit it at any time within 16 months from the date of issue and retain continu-

ous membership in the International Typographical Union by payment of all accumulated dues and assessments due the local and International unions. A fee of $10.00 must be paid by every member depositing a withdrawal card who does not take advantage of retaining continuous membership. Such fees must be forwarded to the I. T. U. Secretary-Treasurer to be credited to the I. T. U. General Fund.

Article IV

DUES

Section 1. Each journeyman member of this Union shall pay to the Secretary-Treasurer monthly ..... percent on gross earnings as dues, in addition to International Typographical Union per capita tax and assessments. A rebate of $..... shall be allowed each member attending regular meetings of the Union; *Provided*, such rebate shall not exceed .....% of the amount of local dues paid.

Section 2. The local dues of members may be suspended during illness. Members may be placed on the superannulated list, and be exempted from payment of local dues; *Provided*, International Union per capita tax and assessments of such sick and superannuated members are assumed and paid by the Union and working cards properly stamped are issued monthly to said members.

Section 3. Apprentices shall make application for apprentice membership at the beginning of their second year. After initiation as apprentice members they shall pay per capita tax as provided by International law. (Apprentice members may be required

to pay local dues and assessments if the local union so decides.)

Section 4. Proposals to increase or decrease local dues or levy a special assessment may be adopted *only by majority vote by referendum of six-month members.* Ballot shall plainly explain necessity for the proposed change. Whenever it is proposed that a special assessment shall be made for more than one purpose, each proposition must be voted upon separately. Provision must be made for a specific date on which the collection of each special assessment shall be discontinued. Special assessments levied by local unions must apply to all classes of members actively engaged at the printing trade in a manner that is equitable.

Article V

Suspension and Reinstatement

Section 1. Members of this Union or members holding traveling cards shall stand suspended when four months in arrears for local or International dues or assessments. Members suspended for nonpayment of dues shall have no standing in the organization and shall not be entitled to benefits.

Section 2. For reinstating members suspended for nonpayment of dues the local Union shall collect a reinstatement fee as provided by International Typographical Union laws and such local and International Typographical Union dues and assessments as were due at the time of suspension, together with such International Union per capita tax and assessments as shall have accrued to the time of reinstatement; and the Secretary of the local Union shall transmit to the Secretary-Treasurer of the International

Union, properly segregated by months, all International Union dues and assessments collected by such subordinate Union, together with that portion of the reinstatement fee so specified by International Typographical Union law. A suspended member who works at the printing business within the jurisdiction of a subordinate union of the I. T. U. or is guilty of conduct unbecoming a union member during the period of his suspension, or who does not seek reinstatement within one year after suspension,

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forfeits his right to reinstatement and can only rejoin by making application for new membership.

Section 3. It shall be the duty of this Union, on request of a member who is sick or disabled, and who shows that he is in destitute circumstances, to protect his membership in the organization during such sickness or disability, the local Union to be reimbursed for this expenditure by the member benefited after recovery.

Article VI

CHAPELS

Section 1. In each office where three or more members of this Union are employed there shall be established a chapel, and one of their number chosen to preside over it. He shall be known in his official capacity as Chairman of the Chapel.

Section 2. To this Chapel shall be referred for adjustment all differences that may arise between the journeymen; but in case either party shall feel itself aggrieved after a decision has been reached by the Chapel, it shall be

the duty of the Chairman to lay the matter before the Executive Committee, whose decision shall have full force and effect until reversed by the Union.

Section 3. All appeals from Chapel decisions to the Executive Committee shall be in writing, signed by the appellant, and be forwarded by the Chairman as soon as possible.

Section 4. The Chairman shall see that all overtime is conspicuously posted.

Section 5. The Chairman shall, immediately after his election, notify the Recording Secretary of the Union. He shall be recognized as the representative of the local union for such purposes as are specified in I. T. U. laws and it shall be his duty to report to the local union any violations of union law or provisions of the contract. (See Article III, I. T. U. Bylaws.)

Section 6. None but members of the International Typographical Union and apprentices shall be per-

mitted to perform any composing room or mailing room work or perform work on any machinery or process appertaining to printing, mailing, or the preparation thereof.

Article VII

ACCUMULATIVE OVERTIME

Section 1. When any situation holder accumulates overtime equal to the unit of hours established for a regular shift he shall engage a competent substitute as soon as one becomes available for the purpose of canceling such over-

time: *Provided,* It shall not be mandatory that any situation holder cancel more than three days' accumulated overtime in any one financial week nor shall it be mandatory that any situation holder cancel accumulated overtime on a holiday which falls within the five-day workweek and for which premium pay is provided for by contract. Holidays or time lost through "begging off" shall not cancel overtime. When more than one substitute is available the one with the most accumulated shifts of overtime must be regarded as unavailable unless there is enough work to be given out by the office or situation holders to employ all substitutes: *Provided,* No substitute shall be restricted on either of the first two shifts for which he accepts work during a financial week, nor shall premium shifts be included in this calculation. A substitute cancels a shift of overtime on any day, up to five days, he does not work in a financial week. Any days worked in that week shall be deducted from said five days.

Section 2. Overtime shall be cumulative for a period of ..... days (not less than 60), provided however, ALL overtime shall accumulate indefinitely until it shall have accumulated to the extent of the unit of hours established for a regular shift unless cancelled prior to such accumulation by the employment of a substitute.

(It is mandatory that each local union adopt laws requiring the posting of overtime in all chapels under its jurisdiction; i.e., a sheet for posting overtime be made available in each chapel and members shall be responsible for posting their own overtime on the day or nite that it was worked and shall be held

responsible for accuracy of the posted record. Overtime worked anywhere outside the place of regular employment must be posted in the chapel where priority is held or where the member is most regularly employed.)

Section 3. Any member having accumulated overtime to give out who fails or refuses to employ an available competent substitute, or who attempts to evade the overtime laws, shall be punished by fine of not less than one day's pay for each offense. Where the records show violation or evasion the fine may be arbitrarily assessed. It is mandatory that local unions impose and collect the fine for which provision is herein made.

Article VIII

FUNDS

Section 1. The funds of this Union shall be applied to defray its necessary expenses, and for such other purposes as may be provided for in the Constitution and Bylaws.

Section 2. All bills and other claims against the Union must be presented and receive a vote of approval at a regular meeting of the Union before payment of same.

Section 3. The Secretary-Treasurer, on proper order, shall pay such bills or claims as have been acted upon by the Union. He shall see that all checks drawn on union funds are countersigned by the President.

Article IX

APPRENTICES

Section 1. The proportion of apprentices to regular journeymen employed shall be as provided in the contract

of the Union with employers. *Provided*, that at least two members of the Union, aside from the proprietor, shall be regularly employed before an office is entitled to an apprentice. No apprentice shall be employed on overtime work unless the number of journeymen working overtime on the same shift equals the ration prescribed in the local

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scale. At no time shall an apprentice have charge of a department or class of work.

Section 2. All apprentices entering the trade shall be required during the first year to pass a physical and technical examination given by the apprentice committee of this Union.

Section 3. No office shall be entitled to employ an apprentice unless it has the equipment necessary to enable instruction being given the apprentice in the several classes of work agreed upon in the contract with the employer to be taught each year.

Section 4. An apprentice, at the end of the first year of apprenticeship, must if competent, be admitted to apprentice membership upon payment of $..... initiation fee, without the privilege of voting. He shall then pay per capita tax required by International law (plus any local dues that may be levied) until he is transferred to the journeyman roll.

Section 5. Every person admitted as an apprentice member of this Union at the beginning of the second year of apprenticeship shall subscribe to the following obligation:

I (give name) hereby swear (or affirm) that I will, in good conscience, and to the best of my ability, comply with

and perform the Duties of Membership of the International Typographical Union, all of which shall in no way interfere with any duty I owe to God or my country.

Section 6. Apprentices shall serve a term of six years at the trade before being admitted to journeyman membership in the Union: *Provided*, That upon request of this Union and the employer, and with the consent of the I. T. U. Bureau of Education, an apprentice may be upgraded, in accordance with I. T. U. law, when he has shown he has applied himself to his work and studies sufficiently to warrant advancement. Failure of an apprentice member on completion of his apprenticeship period to file his application for transfer to the journeyman roll shall be sufficient cause for cancellation of his apprenticeship.

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Section 7. At the end of the first year, when apprentice is obligated as an apprentice member, he shall be registered with the International Secretary-Treasurer, and shall enroll for the Lessons in Printing.

Section 8. Apprentice members shall be required to complete the I. T. U. Course of Lessons in Printing before being admitted to journeyman membership and must, within 90 days from date of initiation, be certified to the I. T. U. Bureau of Education as having satisfactorily passed an examination on the lessons in unionism. They shall pay to the secretary-treasurer of this Union the sum of ..... per ..... until full tuition of the Course is paid.

Section 9. The grade and class of work apprentices shall be taught from year to year shall be defined in contracts so that they will have the opportunity of acquiring a thorough knowledge of the trade.

Intervenor's Exhibit 6.

ARTICLE X

FUNERALS

Section 1. Upon the death of a member in good standing of this Union, the Secretary-Treasurer shall take the action prescribed by the laws of the International Union in order to secure the mortuary benefits provided therein.

ARTICLE XI

ALTERATIONS AND AMENDMENTS

Section 1. These Bylaws may be amended at any regular meeting or not less than three-fourths of the members of the Union, by three-fourths vote, or by a three-fourths vote of the members present, if one month's previous notice has been given of the particular article and section to be amended.

ARTICLE XII

GENERAL DISCIPLINE

Section 1. It shall be the duty of each and every member of this Union to sustain its officers in the proper discharge of their duties.

Section 2. No member shall leave a meeting before adjournment, unless excused by the President.

Section 3. All members of the Union employed in an office are on equal footing, and no favoritism or partiality in the apportioning of work shall be tolerated.

Intervenor's Exhibit 6.

Section 4. No member shall, upon any pretext (except nonpayment of dues) be dropped from the membership roll, fined (except for misbehavior in a Union meeting), suspended or declared a "rat" until he has been duly tried and convicted, according to the provisions of the International Constitution and Bylaws.

Section 5. In voting upon ordering a strike, or to alter, amend or suspend the scale of prices, a secret ballot shall be used in all cases.

Section 6. Members required to work in excess of the unit of hours established as a regular shift or the number of shifts established as the regular work week must receive the overtime rate based on their own hourly rate of pay for all such excess time.

Article XIII

PENALTIES

Section 1. The failure of any member to comply with the Constitution, Bylaws, or an established regulation of the Union may be punished by a fine or reprimand, as the will of two-thirds, or by suspension (except for nonpayment of dues), as three-fourths of the members present at any regular or special meeting shall decide, provided always that the accused shall be accorded a trial as provided by International Union Laws.

Section 2. A member accepting work in an office where a strike has been order by the Union, and who shall refuse to cease work on the call of the President or the Executive Committee, shall be suspended or expelled, as the Union may decide.

Intervenor's Exhibit 6.

Section 3. The chairman of any committee failing to report at the time required, unless further time is granted, shall be fined in a sum not less than $1.00.

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Any member of a committee failing to attend such committee meeting, after being duly notified thereof, shall be fined not less than $1.00, unless reasonable excuse is offered.

Section 4. Any member who shall, during a meeting of the Union, make use of profane or improper language, or appear at a meeting in a state of intoxication, shall be fined by the President from $1.00 to $5.00, and be ejected from the meeting place, which fine shall not be remitted except by a two-thirds vote.

Section 5. A member who shall divulge to any person, whether a member of the Union or not, the name of any other member who may have voted against a person proposed as a member, shall, upon conviction, be fined as two-thirds of the members voting may determine.

Section 6. Any member attempting to deprive another of membership or good standing in this Union by bringing false charges against him, with evident malicious intent, shall, upon trial and conviction thereof, be punished by fine, as the will of two-thirds, or by suspension or explusion as three-fourths of the members present at any regular or special meeting shall decide.

Section 7. A delegate to the International Typographical Union who shall violate instructions adopted by the local Union at meeting after 30 days' notice of such proposed instructions, shall, upon conviction of the offense, be compelled to refund such moneys as may have been

granted him by this Union as compensation, and shall, in addition, be subject to a fine of not less than $10.00 nor more than $25.00.

Section 8. Judges of Election who give information as to how any member voted shall be punished by fine, suspension or expulsion, as the Union may determine upon conviction.

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RULES OF ORDER

1. The President or, in his absence the Vice-President, shall take the chair at the time provided in the Bylaws for regular meetings, or in the call for special meetings. In the absence of both President and Vice-President a President *pro tem.* shall be chosen by the Union.

2. The President shall be privileged to debate upon all subjects before the Union, upon calling the Vice-President or other member to the chair. He shall decide all questions of order, subject to appeal to the Union.

3. Resolutions, amendments to the Constitution or Bylaws, and charges against officers or members must in all cases be presented in writing; otherwise they shall not be considered.

4. When a motion or resolution is once moved, seconded and stated by the presiding officer it shall be in possession of the Union, and can not be withdrawn by the mover, unless the mover, either for the purpose of modifying it or substituting another in its place, desires to withdraw it from consideration, when he may be granted permission

to do so by a motion to that effect, regularly made and adopted by a majority of those present.

5. No question shall be stated unless duly moved and seconded; nor shall it be considered or debated until it has been stated by the chair. Any member voting with the majority on any question may move for its reconsideration at the same or the first regular meeting thereafter, but not afterward.

6. When a question is under debate, no motion shall be received except to adjourn, to vote on the previous question, to lay on the table, to postpone indefinitely, to postpone to a certain day, to commit, or to amend; which several motions shall have precedence in the order of their arrangement. All motions to adjourn, a request for the previous question, to lay on the table, and to postpone indefinitely, shall be decided without debate. A motion for adjournment shall always be in order.

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7. Any member entitled to vote may call for the division of a question when a voice vote has been taken.

8. Five members will suffice to call for the ayes and nays; and a majority of the members voting may call for the previous question.

9. The previous question shall be stated in the following form: "Shall the main question be now put?" If carried, it shall preclude debate and further amendment.

10. Should more than one member rise to speak at the same time, the presiding officer shall determine who is entitled to the floor.

Intervenor's Exhibit 6.

11. No member shall speak more than once on the same question until all members wishing to speak have had the opportunity to do so; nor more than twice without permission from the chair.

12. The presiding officer shall state every question coming before the Union, and immediately before putting it to vote shall ask: "Are you ready for the question?"

13. Each member present entitled to vote shall, when called upon for his vote, declare his assent or dissent to the question.

14. Any member offering a protest against any action of the Union may have the same, if in respectful language, entered in full upon the minutes.

15. All reports of committee shall be in writing, and when read to the Union, unless there is objection, shall be accepted without further action.

16. The number of votes necessary to determine a question, where there is no special regulation to the contrary, shall always be a majority of those voting.

17. Should any discussion over a point of order arise during a division, the presiding officer shall dispose of it by peremptory decision subject to appeal to the Union.

18. A motion to lay on the table shall neither be debated nor amended except as to time.

19. No motion or proposition different from that under consideration shall be admitted under color of an amendment.

20. An amendment of an amendment to an amendment is wholly inadmissible.

21. When questions are considered in Committee of the Whole, the Chair shall enforce the usual rules of order adopted in deliberative assemblies. On the committee rising, the chairman shall report, and said report shall be entered upon the minutes of the Union.

22. Any portion of these Rules of Order that are not laws of the International Typographical Union may be temporarily suspended at any regular or special meeting of the Union by a three-fourths vote of the members present.

23. Robert's Rules of Order shall be authority on all questions of order not provided for by these Rules of Order.

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ORDER OF BUSINESS

1. Reading of Minutes of previous meeting.
2. Roll-Call.
3. Excuses of Absentees.
4. Reports on Applicants for Membership.
5. Balloting for Applicants for Membership.
6. Initiation of Applicants for Membership.
7. Reading of official I. T. U. Communications in full.
8. Reports of Officers.
9. Reports of Committees.
10. Election or Installation of Officers.
11. Unfinished Business.
12. Introduction of New Business.

13. Good and Welfare of the Union.
14. Adjournment.

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This Constitution and Bylaws have been adopted by ..... Typographical (or Mailers) Union No..... for the regulation and procedure of members of this union. They apply under normal conditions* and any provision herein which is found to be contrary to I. T. U. laws, or by authoritative determination to be contrary to civil laws, shall not be enforced until such laws are changed to permit the intended application of the laws herein.

* There is no Taft-Hartley Law in Canada.
Also, there are some purely local situations and others in which the NLRB has administratively decided it will not exercise its jurisdiction.

Intervenor's Exhibit 7.

INTERNATIONAL TYPOGRAPHICAL UNION

FROM THE OFFICE OF DON HURD, SECRETARY-TREASURER

IMPORTANT NOTICE

TO

OFFICERS AND SCALE
COMMITTEE MEMBERS

OF

SUBORDINATE UNIONS

INTERNATIONAL TYPOGRAPHICAL UNION
Office of Don Hurd, Secretary-Treasurer
Post Office Box 728 :: Indianapolis 6, Indiana

(SEAL)

First Class

Intervenor's Exhibit 7.

INTERNATIONAL TYPOGRAPHICAL UNION
FROM THE OFFICE OF DON HURD, SECRETARY-TREASURER
P. O. Box 728 Telephone WAbash 3373
Indianapolis 6, Indiana

(SEAL)

December 18, 1950

To the Officers and Scale Committee
Members of All Subordinate Unions:

Representations have been made to the General Counsel of the National Labor Relations Board which reflect either a malicious misconstruction or an innocent misunderstanding of the I. T. U.'s collective bargaining policy and of its attitude toward compliance with the requirements of all applicable statutes and of orders of the National Labor Relations Board. To prevent the possible ill effects on the I. T. U. intended by such malice or caused by such misunderstanding the Executive Council asserts:

1. The collective bargaining policy adopted at the 1947 Convention, as now "interpreted by the Executive Council," contemplates the execution of lawful agreements. Any subordinate union that does not in good faith bargain for such an agreement violates that policy and will be disciplined in accordance with I. T. U. law and procedure.

2. It has been—and continues to be—the declared and firm intention of the I. T. U. scrupulously to comply with all laws, state and federal, and with the orders of the NLRB.

3. Those provisions of our General Laws which are contrary to public law (such as, for example, Article VI, Section 10, of the General Laws, requiring that all composing room employes be members of the I. T. U. and that part

of Article XII, Section 1, of the Constitution, which may be construed as requiring an oath of obligation by foremen and others to discriminate against non-members) are suspended so long as such public law remains in effect. It is contrary to law, contrary to the Board's orders and contrary to the I. T. U. collective bargaining policy for any subordinate local to cause or attempt to cause any employer to discriminate against any person because of his non-membership in the I. T. U.

4. All contract proposals submitted or received by subordinate locals shall be the subject of genuine, good faith collective bargaining within the widest meaning of the Taft-Hartley Law and the Board's orders. In no instance shall any subordinate local assume or assert that any proposal is not bargainable, or otherwise decline to make or hear any desired explanation. We point out, however (and we do so only because of the deliberate and persistent conspiracy on the part of some to destroy conditions achieved after many years of collective bargaining by perverting both the statutory and historic meanings of collective bargaining) that collective bargaining "does not compel either party to agree to a proposal or require the making of a concession." (Section 8(d) of Taft-Hartley.)

5. Neither Taft-Hartley nor the Board's orders prohibit a voluntary agreement to employ only union foremen. Subordinate locals may, therefore, lawfully request and their employers may lawfully grant such an agreement. The Board has held unlawful a strike or similar economic pressure or the threat thereof for the employment of union foremen possessing the managerial powers to bargain collectively or to adjust grievances. Accordingly the Executive Council has issued—and now repeats—the instruction

that no subordinate local shall engage in any such strike or similar economic pressure or in any threat thereof.

By Order of the Executive Council.

INTERNATIONAL TYPOGRAPHICAL UNION

WOODRUFF RANDOLPH, *President*
CHARLES M. LYON, *First Vice-President*
HAROLD H. CLARK, *Second Vice-President*
JOE BAILEY, *Third Vice-President*
(SEAL) DON HURD, *Secretary-Treasurer*

Adopted, December 18, 1950.

[Officers of Subordinate Unions are directed to require each and every member of each scale committee to read the above decision of the Executive Council.]

General Counsel's Exhibit 1h.

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.	DO NOT WRITE IN THIS SPACE Case No. 2-CA-4967 Date Filed 6-25-56
INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	Compliance Status Checked By:

General Counsel's Exhibit 1 h.

1. Employer against whom charge is brought

Name of Employer
News Syndicate Co. Inc.

Number of Workers Employed
5,000

Address of Establishment (Street and number, city, zone, and State)
220 East 42nd Street, New York, N. Y.

Type of Establishment (Factory, mine, wholesaler, etc.)
newspaper publisher

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the (List subsections) National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about June 15th 1956, News Syndicate Co. Inc., by its officers, agents and employees, has discriminated in terms and conditions of employment against Burton Randall, mailer, because of his non-membership in New York Mailers' Union Number Six affiliated with the International Typographical Union, AFL-CIO.

By the above and by other acts and conduct, it by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the said Act.

9:00 A. M.
Received
Jun 25 1956
Second Region
New York, N. Y.
NLRB

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Burton Randall

General Counsel's Exhibit 1h.

4. Address (Street and number, city, zone, and State)	Telephone No.
34 Center Drive, Syosset, L. I.	Walnut 1-4132

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. Address of National or International, if any (Street and number, city, zone, and State)

Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By BURTON RANDALL
(Signature of representative or person filing charge)

June 17, 1956 (Date)

Individual (Title, if any)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

General Counsel's Exhibit 1t.

ORIGINAL

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

AMENDED COMPLAINT

It having been charged by Burton Randall, 34 Center Drive, Syosset, New York, herein called Randall, that News Syndicate Company, Inc., 220 East 42nd Street, New York, New York, herein called Respondent Company, and New York Mailers' Union No. 6, International Typo-

graphical Union, AFL-CIO, 1 Beekman Street, New York, New York, herein called Respondent Union, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter referred to as the Act, and the said cases having been consolidated, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, designated by the Board's Rules and Regulations—Series 6, as amended, Section 102.15, hereby issues this consolidated Complaint and alleges as follows:

1. (a) A copy of the Charge in Case No. 2-CA-4967 was served by registered mail upon Respondent Company on June 25, 1956.

(b) A copy of the Charge in Case No. 2-CB-1769 was served by registered mail upon Respondent Union on June 25, 1956.

2. Respondent Company is, and has been at all times herein mentioned a corporation duly organized under and existing by virtue of the laws of the State of New York.

3. At all times herein mentioned, Respondent Company has maintained its principal office and publishing plant at 220 East 42nd Street, in the City of New York, State of New York, herein called the 42nd Street plant, and various other places of business, warehouses and other facilities in the State of New York, and is now and has been continuously engaged at said plant and places of business in the publishing of a daily newspaper called The New York Daily News.

General Counsel's Exhibit 1t.

4. During the past year, Respondent Company, in the course and conduct of its publishing operations, held membership in, or subscribed to, various inter-state news services, including, *inter alia*, United Press, Associated Press, International News Service, advertised various nationally sold products, including, *inter alia*, automobiles, appliances, airplanes, and had gross revenues from said publishing operations in excess of $1,000,000.

5. Respondent Company is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. Since on or about June 15, 1956, Respondent Company has discriminated and is discriminating against its employees employed at its 42nd Street plant in regard to hire or tenure of employment or term or condition of employment, by the following conduct:

(a) Since on or about June 15, 1956, Respondent Company has provided its employee, Randall, with less employment than he normally would have received, by according preference to members of Respondent Union.

(b) Since on or about June 15, 1956, Respondent Company has accorded preference to members of Respondent Union over Randall and other nonmembers of Respondent Union in the employment of extras for work in the mail room of the 42nd Street plant.

8. Respondent Company did provide Randall with less employment than he normally would have received because he was not a member of Respondent Union.

9. On or about June 15, 1956, and since that date, Respondent Union, by its officers, agents, organizers and representatives, has caused and attempted to cause Respondent Company to discriminate against its employees in regard to hire or tenure of employment, or other terms or conditions of employment, by the following conduct:

(a) On or about June 15, 1956, and since that date, Respondent Union required and instructed Respondent Company to provide its employee, Randall, with less employment than he normally would have received because of his lack of membership in Respondent Union.

(b) On or about June 15, 1956, and since that date, Respondent Union required and instructed Respondent Company to accord preference to members of Respondent Union over Randall and other nonmembers of Respondent Union in the employment of extras for work in the mail room of the 42nd Street plant.

10. From on or about December 26, 1955, and prior thereto, until December 26, 1956, Respondent Company and Respondent Union maintained in effect and enforced, and on December 26, 1956, Respondent Company and Respondent Union executed, and since December 26, 1956, have maintained in effect and enforced, successive collective bargaining agreements relating to hire, terms and conditions of employment of Respondent Company's employees in its mail rooms. Said agreements contain, *inter alia*, provisions which provide that:

(a) Respondent Company is required to employ only members of Respondent Union, and that Respondent Company is required to hire members of Respondent Union on a preferential basis, which provisions do not comply with the requirements of Section 8(a)(3) of the Act.

General Counsel's Exhibit 1t.

(b) Respondent Union is delegated the maintenance of the seniority and priority system of the employees in the mail rooms of Respondent Company.

11. The agreements referred to above in paragraph 10 were made, renewed and extended, as alleged in paragraph 10, although Respondent Union had never received from the Board a notice of compliance with Section 9 (f), (g) and (h) of the Act, and when Respondent Union was not in compliance therewith.

12. By reason of the acts described above in paragraphs 10 and 11, the agreement described above in paragraph 10, any modification, supplement, or renewal, or extension thereof, is invalid and in violation of the Act, and interferes with, restrains and coerces Respondent Company's employees in the exercise of the rights guaranteed in Section 7 of the Act.

13. Since on or about December 26, 1955, and prior thereto, Respondent Company and Respondent Union have maintained in effect and enforced an arrangement, understanding and practice relating to hire, terms and conditions of employment of the mail room employees of Respondent Company, whereunder:

(a) Respondent Company is compelled and required to hire only members of Respondent Union.

(b) Respondent Company is compelled and required to accord preference in hiring and in retention of employment to members of Respondent Union.

(c) Respondent Company delegates to Respondent Union the maintenance of the seniority and priority system of Respondent Company's mail room employees.

14. The arrangement, understanding and practice described above in paragraph 13 is invalid and in violation of the Act, and interferes with, restrains and coerces Respondent Company's employees in the exercise of the rights guaranteed in Section 7 of the Act.

15. By the acts described above in paragraphs 7, 8, 10, 11 and 13, and by each of said acts, Respondent Company did interfere with, restrain and coerce, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

16. By the acts described above in paragraphs 7, 8, 10, 11 and 13, and by each of said acts, Respondent Company did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization, and Respondent Company thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

17. By the acts described above in paragraphs 9, 10, 11 and 13, and by each of said acts, Respondent Union did restrain and coerce, and is restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

18. By the acts described above in paragraphs 9, 10, 11 and 13, and by each of said acts, Respondent Union did cause and attempt to cause, and is causing and attempting to cause, an employer to discriminate in regard to hire or

General Counsel's Exhibit 1f.

tenure or terms or conditions of employment of the Respondent Company's employees, or applicants and prospective applicants for employment, thereby encouraging membership in a labor organization, and Respondent Union did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

19. The activities of Respondent Company, described above in paragraphs 7, 8, 10, 11 and 13, and the activities of Respondent Union, described above in paragraphs 9, 10, 11 and 13, occurring in connection with the operations of Respondent Company, described above in paragraphs 3 and 4, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3), 8(b)(1)(A) and (2), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, on this 29th day of July, 1957, hereby issues this consolidated Amended Complaint against News Syndicate Company, Inc. and New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, Respondents herein.

CHARLES T. DOUDS,
CHARLES T. DOUDS,
Regional Director,
National Labor Relations Board,
2 Park Avenue,
New York 16, New York.

General Counsel's Exhibit 1gg.

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

ANSWER OF RESPONDENT COMPANY TO AMENDED COMPLAINT.

Respondent News Syndicate Company, Inc., by its attorneys, Townley, Updike, Carter & Rodgers, answering the amended complaint herein issued on July 29, 1957:

General Counsel's Exhibit 1gg.

I. Denies that it has knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "1(b)", "6" and "11" of said amended complaint.

II. Denies each and every allegation contained in paragraphs "7", "8", "9", "10", "12", "13", "14", "15", "16", "17", "18" and "19" of said amended complaint.

WHEREFORE, respondent company demands that the amended complaint be dismissed.

TOWNLEY, UPDIKE, CARTER & RODGERS,

By J. H. CARTER,
Attorneys for Respondent Company.
Office & P. O. Address;
220 East 42nd Street,
New York 17, N. Y.
MUrray Hill 2-4567.

State of New York, }
County of New York. } ss.:

P. B. STEPHENS, being duly sworn, deposes and says that he resides in New York County, New York; that he is Secretary and General Manager of Respondent News Syndicate Company, Inc.; that he has read the foregoing answer of said Respondent and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

P. B. STEPHENS.

General Counsel's Exhibit 1gg.

Sworn to before me this
9th day of September, 1957,
Andrew L. Hughes,
Notary Public, State of New York,
No. 30-6997450,
Qualified in Nassau County,
Certificate filed in New York County,
Term Expires March 30, 1958.

Copies of the foregoing answer of respondent company to the amended complaint herein were served by mail today, upon respondent Union and the charging party at the address stated in the charge, and upon Sidney Sugerman, attorney for respondent Union at 295 Madison Avenue, New York 17, N. Y., and upon Gerhard Van Arkel, attorney for International Typographical Union, intervenor, at Suite 601, 1701 K. Street, N. W., Washington 6, D. C.

So certified: J. H. CARTER,

September 9, 1957.

1202

Intermediate Report and Recommended Order.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

Washington, D. C.

New York, N. Y.

NEWS SYNDICATE COMPANY, INC.,

and

BURTON RANDALL, an Individual,

and

PUBLISHERS' ASSOCIATION OF NEW YORK CITY,

Party to the Contract.

Case No. 2-CA-4967.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,

and

BURTON RANDALL, an Individual,

and

PUBLISHERS' ASSOCIATION OF NEW YORK CITY,

Party to the Contract.

Case No. 2-CB-1769.

Intermediate Report and Recommended Order.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,

and

JULIUS ARRIGALE, an Individual,

and

THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,

and

PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

Harold L. Richman, Esq., for the General Counsel.

J. Howard Carter, Andrew L. Hughes, and Donald J. Bain, Esqs., of Townley, Updike, Carter & Rodgers, New York City for News Syndicate and Publishers' Association.

Sidney Sugarman, Esq., of New York City, for New York Mailers' Union No. 6.

Gerhard P. Van Arkel, Esq., of Washington, D. C. for International Typographical Union, AFL-CIO, Intervenor.

Before: Louis Libbin, Trial Examiner.

1203

STATEMENT OF THE CASE

Upon charges duly filed in Cases Nos. 2-CA-4967 and 2-CB-1769 by Burton Randall, an individual herein called

Randall, the General Counsel of the National Labor Relations Board, by the Regional Director for the Second Region (New York, New York), issued a consolidated complaint, dated September 10, 1956, against Respondent News Syndicate Company, Inc., herein called News, and against Respondent New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, herein called Mailers. Thereafter, on July 29, 1957, a consolidated amended complaint was issued against the News and the Mailers. The Publishers' Association of New York City, herein called the Publishers, was named as a Party to the Contract in the amended complaint. The complaint, as amended, alleged that News had engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and that Mailers had engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

Upon charges filed in Case No. 2-CB-1807 by Julius Arrigale, an individual herein called Arrigale, the General Counsel, by the Regional Director for the Second Region, issued a complaint, dated July 22, 1957, against Respondent Mailers. Dow Jones & Company, Inc., herein called Dow Jones, publisher of the Wall Street Journal, herein called Journal, was named as a Party to the Contract, and Publishers was named as a Party in Interest. This complaint alleged that Mailers had engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

1204

In their duly filed answers, Respondents News and Mailers denied the unfair labor practice allegations.

On July 31, 1957, the above cases were consolidated for purposes of hearing. A motion to intervene in all these cases, filed by International Typographical Union, AFL-CIO, herein called ITU, was granted on August 15, 1957.

Pursuant to due notice, a hearing was held in New York City, on various dates between November 12 and 21, 1957. Respondents News and Mailers, Intervenor ITU, and Publishers, the Party to the Contract, were each represented, and afforded full opportunity to be heard, to examine and cross examine witnesses, to introduce relevant evidence, to present oral argument, and to file briefs as well as proposed findings of fact and conclusions of law. Respondent News' motion to dismiss the complaint, upon which I reserved ruling, is disposed of in accordance with the findings of fact and conclusions of law made below. Subsequent to the hearing, each Respondent, the ITU, and the General Counsel filed briefs which I have fully considered.

Upon the entire record[1] in the case, and from my observation of the witnesses, I make the following:

1205

FINDINGS OF FACT

I. The Business of the Companies Involved

Respondent News, with its principal office and plant in New York City, is engaged in the publishing of a daily

[1] I hereby note and correct the following inconsequential but obvious typographical errors in the typewritten transcript of the testimony:
On page 62, l. 7, "ahead" is corrected to read "after";
On page 74, l. 20, "1956" is corrected to read "1946";
On page 177, l. 7, "wasn't" is corrected to read "was";
On page 277, l. 18, "II" is corrected to read "111";
On page 454, l. 5, is corrected to insert "not" between the words "may" and "be";
On page 922, l. 20, "2-CB-74" is corrected to read "9-CB-74."

newspaper called the New York Daily News. Dow Jones & Company, Inc., herein called Dow Jones, with its principal office and place of business in New York City, is engaged in New York City and in various plants located in other states in the publishing of a daily newspaper called the Wall Street Journal, herein referred to as the Journal.

The record shows, and I find, that the News and Dow Jones are engaged in commerce within the meaning of the Act for the purposes of the Board's assertion of jurisdiction in this proceeding.

II. The Labor Organizations Involved

The record shows, and I find, that Mailers and ITU are each labor organizations within the meaning of Section 2 (5) of the Act.

III. The Unfair Labor Practices

A brief resume of the previous cases involving the ITU may be helpful to an understanding of the issues involved in this proceeding. On October 28, 1949, the Board issued a Decision,[2] adopting the Trial Examiner's findings that the intended and actual effect of the ITU's collective bargaining policy, following the passage of the Taft-Hartley Act, was to compel employers to exclude nonmembers from employment. The Board found that the ITU's bargaining programs, specifically the conditions of

1206

employment strategy and the 60-day contract strategy, violated the Act because they represented coercive pressures by the ITU upon employers, designed to compel bar-

[2] *International Typographical Union et al.*, 86 NLRB 951.

gaining to effect the maintenance of the closed-shop conditions which existed before the effective date of the 1947 amendments to the Act. About the same time, similar findings were made by the Board in the *Chicago Typographical Union* case (86 NLRB 1041). Board orders in these two cases were enforced by the Court of Appeals for the Seventh Circuit (193 F. 2d 782). On February 25, 1948, Judge Swygert of the District Court of Indiana issued a decree enjoining the ITU generally from giving effect to, and instructing local unions to give effect to, any collective bargaining policy which in any manner discriminated against employees in regard to hire or tenure of employment because of nonmembership in the ITU.[3] Upon the Board's petition, in October 1948, to adjudge the ITU in contempt of this decree, Judge Swygert found the ITU in contempt on some but not all of the Board's contentions (81 F. Supp. 675).

The ITU cases hereinabove mentioned involved contract demands covering composing room operations. The cases in the instant proceeding involve the mail room operations. Generally, the work of the mail room begins when the newspapers come off the presses, and comprises the addressing, bundling, tieing and other handling of the papers, preparatory to placing them aboard trucks for delivery to newsdealers, trains, or the post office. The instant cases raise issues concerning the validity of provisions embodied in executed contracts covering mail room employees and operations, of employment practices in the mail rooms of the News and Journal, and of the treatment of two specific employees in these two mail rooms.

[3] *Evans v. International Typographical Union*, 76 F. Supp. 881.

A. *The written agreements*

The News and Dow Jones are, and have been, parties to a collective bargaining agreement with the Mailers, the terms of which, so far as material to the allegations in the complaints, have been in effect since December 26, 1955. The complaints allege, and the General Counsel contends, that by maintaining and executing agreements which contain provisions requiring the News and Dow Jones to hire only members of the Mailers, to give preference in employment to members of the Mailers, and to delegate to the Mailers the maintenance of the seniority and priority system of the mail room employees of the News and the Journal, Respondent News has violated Section 8 (a) (1) and (3) of the Act and Respondent Mailers has violated Section 8 (b) (1) (A) and (2) of the Act.[4] The provisions which the General Counsel attacks fall into two categories; (1) those which appear on the face of the contract itself, and (2) certain General Laws of the ITU which are asserted to be incorporated in the contract by reference.

1. ITU General Laws incorporated by reference

Section 24 of the contract in effect when the present charges were filed provides, in pertinent part, as follows:

> It is understood and agreed that the General Laws of the International Typographical Union in effect January 1, 1955, not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein.

[4] As no charge was filed against Dow Jones, it is not included in the Complaint as a Respondent.

Section 24 of the current contract, in identical language, provides that the General Laws in effect January 1, 1957, shall govern and that, from December 8,

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1956, to January 1, 1957, the 1956 ITU laws shall govern.

The General Counsel contends that under this section, the following laws of the ITU are incorporated into the contract and create unlawful conditions of employment:[5]

> Art. III, Sec. 12: It is the unalterable policy of the ITU that all * * * mailing room work or any machinery or process appertaining * * * to mailing * * * belongs to and is under the jurisdiction of the ITU. Subordinate unions are hereby directed to reclaim jurisdiction over and control of all * * * mailing room work * * * now being performed by non-members.
>
> Art. V, Sec. 11: All persons performing the work of foremen or journeymen at any branch of the printing trade, in offices under the jurisdiction of the ITU, must be active members of the local union of their craft and entitled to all the privileges and benefits of membership.
>
> Art. V, Sec. 12: The ITU recognizes only two classes of labor in union shops, journeymen and apprentices.

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> Art. VII, Sec. 1: * * * None but members [of the ITU] shall be permitted to operate, maintain and service any mailing machinery or equipment when used on work under the jurisdiction of the ITU * * *.

[5] The record contains the General Laws appearing in the ITU Book of Laws for 1955, 1956 and 1957. The General Laws set forth in the text are the same for each of these years but may appear in an Article or Section bearing a different number. For clarity and convenience, all references will be to the General Laws found in the 1957 Book of Laws.

Art. VII, Sec. 2: In machine offices under the jurisdiction of the ITU, no person shall be eligible as a "learner" on machines who is not a member of the ITU. * * *

Art. VIII, Sec. 1: All machine tenders and machinists, members engaged in the adjustment, repair, and maintenance of all mechanical devices used in the performance of * * * mailing room work shall be members of the ITU * * * *. All work pertaining to maintenance and care of machines is to be performed exclusively by machine tenders who are journeymen or apprentice members of the ITU.

Art. X, Sec. 1: Persons considered capable as substitutes by foremen shall be deemed competent to fill regular situations, and the substitute oldest in continuous service shall have prior right in the filling of the first vacancy. * * *

Art. X, Sec. 2: Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

Art. X, Sec. 5: Any member engaged to serve the International Typographical Union, a subordinate union or to perform work

in the interest of the organized labor movement, or any member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the

priority substitute competent to perform the work if one is available. The situation holder shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority sub, and considered in the category of a new situation. Upon reporting for duty full priority rights shall be restored.

Art. X, Sec. 6: Available priority substituté competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I. T. U. laws or contracts: Provided, should a substitute with greater priority become available such substitute shall be placed on said situation: Provided further, local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to but not more than ninety calendar days from absence of situation holder.

Art. I, Sec. 3: * * * upon application for apprenticeship all such [mailer and machinist] apprentices must subscribe for, and complete the Course of Lessons in Unionism within 90 days from date of registration. * * *

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Woodruff Randolph, president of the ITU, explained that the General Laws of the ITU contain those union laws governing wages, hours, and working conditions "to which

we ask employers to subscribe as being the essence of the union shop." The "union shop" referred to by Mr. Randolph is not the union shop contemplated by the amended Act but is "one employing only members of the union on work processes covered by our jurisdiction." That this pre-Taft-Hartley concept was still in current use is demonstrated by Randolph's speech to the annual convention of the ITU on August 17, 1957, in which he stated, among other things, that "since 1944 we have had a nationwide struggle with employers to maintain our general laws as a basis of union shop operations," and by similar usage of the term "union shop" in its closed shop sense in the July 1957 edition of the ITU's official magazine.

The General Laws, hereinabove set forth, relate to three subject matters, (1) union security; (2) the establishment and control by the local union of a system of employment priority and seniority among union members, and (3) a course in unionism for apprentices. An examination of the contract discloses that these matters are not specifically enumerated therein. Thus, while Section 1 of the contract defines "employees" as "journeymen and apprentices" and Section 5 provides that only journeymen and apprentices shall be employed, the contract's definition of journeymen in Section 20-b contains no language relating to membership or nonmembership in the Mailers. Similarly, the contract's definition of the Mailer's jurisdiction in Section 2 contains no reference as to whether the work is to be done by members or whether nonmembers may also be permitted to do the work. While it is clear that union membership is not made a condition of achieving the status of a journeyman, the contract contains no provision with respect to the membership or nonmembership requirements

once journeymen status has been achieved. Nor does the contract contain any specific provisions concerning the operation of a priority or seniority system, the hiring

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order of employees, or as to whether hiring or employment is to be governed by union membership or nonmembership. Finally, the requirement that apprentices must complete a course in unionism is not among the requirements prescribed in the contract by the Joint Apprenticeship Committee for the training of apprentices.

It is thus apparent that the General Laws, hereinabove set forth, embody conditions not specifically enumerated in the contract. It is also apparent that these conditions do not conflict with, but rather supplement, the terms already in the contract. In agreement with the General Counsel, I find that the General Laws, hereinabove set forth, have been incorporated by reference into the contract.

It is clear that the contract, when read in conjunction with the incorporated General Laws, creates unlawful closed shop and preferential hiring conditions. As the incorporated General Laws require all journeymen to be active union members, the term "journeymen" in the contract must be held to refer only to journeymen who are union members. Hence, Section 5, whereunder the employers agree to employ only journeymen in their mail rooms, constitutes nothing less than a closed shop provision. The contract thus restricts to members the work tasks enumerated in the definition of the Mailers' jurisdiction.

The incorporation of the General Laws concerning the priority system establishes that system which governs employment priority and seniority of mail room employees

under the sole charge of the Mailers. Under Section 33-c of the contract, the General Laws are not subject to arbitration. The Board has held that a contract clause which delegates

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to a union complete control over matters affecting seniority is unlawful.[6] In line with these decisions, I find that the delegation contained in the incorporated General Laws is equally unlawful.

There remains for consideration the incorporated General Law requiring apprentices to subscribe for and complete a course of lessons in unionism. Randolph testified that this course consists of the history of the ITU, its policies and principles. He further testified that this provision applies only to apprentices who apply for apprentice membership at the beginning of their second year, when they first become eligible for such membership. In the absence of any contrary evidence, I regard this as a reasonable construction, not at variance with any other provisions. So construed, this provision merely contains a requirement for becoming an apprentice member. As apprentices are not required to be members as a condition of employment,[7] I find nothing unlawful in this provision.

The General Counsel, presumably disagreeing with this construction, contends that the imposition of such a requirement, despite the fact that most, if not all, apprentices may desire membership in the ITU, is a violation of Section 8 (b) (1) (A) because it restrains and coerces said appren-

[6] *International Brotherhood of Teamsters, etc., Local No. 41 (Pacific Intermountain Express Company)*, 107 NLRB 838; *North East Texas Motor Lines, Inc.*, 109 NLRB 1147, 1148; *Chief Freight Lines Company*, 111 NLRB 22, 32; *Kenosha Auto Transport Corporation*, 113 NLRB 643.

[7] Cf. *The Kansas City Star Company*, 119 NLRB No. 132.

tices in the exercise of their right to refrain from engaging in that kind of activity.[8]

I have no doubt that taking a course in unionism is a concerted activity protected by Section 7 of the Act. There is no contention nor claim that the lectures contain coercive remarks. The issue then, on the General Counsel's theory, is whether the compulsory aspect of the requirement constitutes restraint or coercion within the meaning of Section 8 (b) (1) (A). I believe not. The Board has held that Section 8 (c) and its legislative history makes it clear that the "compulsory audience" doctrine enunciated in

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the *Clark Bros.* case (70 NLRB 802) no longer exists as a basis for finding unfair labor practices and that the employer did not violate the Act by compelling his employees to attend and listen to an antiunion speech.[9] Under this decision, it would not be unlawful restraint or coercion, in my opinion, for an employer to require as a condition of employment that his employees listen to lectures on the evils of unionism or of a specific union. As Section 8 (c) applies with equal force to Section 8 (b) (1) (A), I find that the requirement in this clause does not, in any event, constitute unlawful restraint or coercion and hence is not violative of the Act.

2. Provisions appearing on the fact of the contract

Section 4 of the contract provides that:

> Superintendents and Foremen and Assistant Foremen of mailing and Delivery Departments shall be appoint-

[8] Although not specifically alleged in the complaint, the General Counsel stated his position with respect to this provision early in the hearing and the issue has been litigated and briefed.

[9] *The Babcock & Wilcox Co.*, 77 NLRB 577, 578.

ed and may be removed by the Publishers, and shall be members of New York Mailers' Union No. 6.

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Section 20-a provides that:

> The operation, authority, and control of each Mail Room shall be vested exclusively in the office through its representatives, the Foreman. Foremen of Mail Rooms have the right to employ help and may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, * * * which shall in no way abridge * * * their rights under accepted ITU laws, and (4) to decrease the force * * *. Employees considered competent as substitutes by Foremen shall be deemed competent to fill regular situations * * *.

Section 20-b provides that:

> The Foreman shall do all the hiring and discharging of all employees engaged in working in the various Mail Rooms. The Foreman shall have sole authority to issue orders * * *. Only journeymen and apprentices shall be employed on work covered by this agreement.

Section 20-c provides:

> The Union shall not discipline the Foreman for carrying out the instructions of the Publisher or his representative in accordance with this agreement.

The General Counsel does not contend that the mere requirement that superintendents and foremen be members of the Mailers is, without more, violative of the Act. It is, however, the General Counsel's position that this requirement, when taken in conjunction with the obligations of

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members set forth in the ITU's Constitution and General Laws and in the Mailers' Constitution and By-Laws, constitutes a *prima facie* violation of the Act. In support of his position, the General Counsel relies on the following testimony and provisions:

President Randolph testified that foremen are expected to be members in good standing of their particular local and to abide by Article 12 of the ITU's Constitution. This Article provides, in pertinent part, that it is a member's duty "to comply with all the laws, rules, regulations and decisions of the ITU and of any subordinate union thereof to which the member may belong and to support both in furthering the interest of the Union in legal manner and by legal means, * * * to accord courtesy, fair treatment and cooperation to other members in the carrying out of the duties of membership. * * *"

The men responsible for the mail room hiring in the instant cases, Rottenberg, Mail Room superintendent of the News, and Every, Mail Room foreman of the Journal, are members of the Mailers in good standing; both admitted that they try to abide by the Mailers' Constitution and By-Laws and the ITU's Constitution, By-Laws and General Laws.

The General Counsel also points to the following provisions of the Mailers' Constitution:

Art. I, Sec. 7 provides, after an enumeration of the various work tasks "appertaining to mailing," that "no person except members and apprentices of this Union shall be allowed to perform such work."

Art. III, Sec. 1 states that "Each member of this Union is obligated to support, abide by, enforce and maintain the Constitution, By-Laws, Rules and Regulations of this Union."

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Other provisions restricting mail room work to members are Section 1 of Article XVI providing that "none but journeymen members of this Union shall be allowed to operate any mailing machine" and various other machines described "or any other machine that may hereafter be introduced." Section 2 of the same Article provides: "Members of this union shall handle and deliver all papers and books wrapped, stamped, inserted or tied by such machines."

Because of his duty to cooperate with other members in carrying out the duties of membership, the General Counsel further contends that the following sections also govern the foreman as a member:

Art. XV, Duties of [Chapel] Chairman,[10] Section 4, provides that the chairman "shall see that none but members of New York Mailers' Union No. 6 are employed in his Chapel * * *." Section 7 of the same article provides that "under no circumstances shall the Chairman allow the office to work short handed if possible to obtain a Union substitute." This last provision is implemented by Art. XI, Sec. 7 of the Mailers' By-Laws providing that "Foremen shall give the Chairman of the Chapel ample time to procure a substitute for an absent regular."

The Board has held that where an employer entrusts his hiring to foremen who are members of a union and bound

[10] A chapel chairman is comparable to a union steward. The mail rooms of the News and Journal are each a chapel.

by the union's laws, which provide for closed shop conditions, the employer thereby in effect agrees with the union to operate under closed shop conditions.[11] In any event, I am convinced that, in view of the unlawful employment practices followed in the mail rooms of the News and the Journal, as hereinafter set forth, in detail, the purpose and effect of the clause requiring superintendents and foremen to be union members is to maintain the closed shop and union controlled hiring practices. Accordingly, under the circumstances disclosed

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by this record, I find this clause to be violative of the Act.

3. Respondents' contentions

(a) *Effect of the savings clauses*

As previously shown, Section 24 of the contract provides for the incorporation by reference of those General Laws "not in conflict with this contract or with federal or state law." Section 38 of the contract states that should "any provision of this agreement at any time during its life be in conflict with Federal or State law or regulation, then such provision shall continue in effect only to the extent permitted." The contract on its last page, in extremely fine print difficult to decipher, is approved by President Randolph, "as being in compliance with the laws of the International Typographical Union, as limited by the Taft-Hartley Law."

Article XIV of the General Laws provides that "in circumstances in which the enforcement or observance of provisions of the General Laws would be contrary to public

[11] *Enterprise Industrial Piping Company*, 117 NLRB 995, 996.

law, they are suspended so long as such public law remains in effect.

The flyleaf of the Mailers' Constitution and By-Laws contains the following language which, the Mailers assert, constitutes notice to members that they need not observe those provisions of the Constitution and By-Laws which conflict with the Act:

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> This Constitution and these By-Laws apply under normal conditions and any provision herein which is found to be contrary to ITU Laws, or by authoritative determination to be contrary to Civil Laws, shall not be enforced until such laws are changed to permit the intended application of the laws herein.

The Mailers and the ITU contend that the foregoing clauses neutralize any unlawful provisions and prevent any General Laws violative of the Act from being incorporated in the contract by reference. I do not agree.

None of the clauses refers to, or suspends, the operation of any specific provisions of the contract, General Laws, or Mailers' Constitution and By-Laws. The testimony is undisputed that neither the ITU, the Mailers, nor the publishers of the News and the Journal issued any instructions to the effect that any particular provision in the above documents was not to be followed as being violative of the Act. As stated in the General Counsel's brief, these clauses "represent nothing more than pious hopes, recitals that the parties do not intend to violate the law, and instructions to employees and members not do anything unlawful." Under these circumstances, the Board and the courts have held that general savings clause of this type may reason-

ably be construed as contemplating the enforcement of all provisions until such time as they are declared illegal by an appropriate tribunal and hence do not have the effect urged by Respondents.[12] The ITU contends in its brief that it is absurd to assume that any employee or applicant "will first read the agreement with the close attention of a lawyer in the General Counsel's office and conclude, like him, that the agreement is valid on its face; that his attention will then be attracted to Section 24 of the agreement; that, undissuaded by the 'not in conflict with law' proviso, he will then search out a copy of the ITU General Law, and, ignoring the provisions of

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Article XIV, will feel himself 'restrained or coerced' by the possible future illegal application of one or another law." But this is precisely the vice inherent in these savings clauses. The theory underlying the decisions cited in the footnote is that an employee cannot be expected to understand the scope of these clauses and therefore, if only as a hedging device against a possible future upholding of the provisions, will feel compelled to comply with all of them. Moreover, even if the savings clauses may be re-

[12] See, *e.g.*, *Unique Art Manufacturing Co.*, 83 NLRB 1250, 1252, (any provision of the contract which is contrary to any Federal or State Law is null and void); *Reading Hardware Corporation*, 85 NLRB 610, 611 (This article shall be binding on the company only in so far as the law of the United States of America and the Commonwealth of Pennsylvania allows it to perform); *N. L. R. B. v. Gaynor News Co.*, 197 F. 2d 719, 723-724 (C. A. 2), affd. 347 U. S. 17 (To the best knowledge and belief of the parties this contract now contains no provision which is contrary to Federal or State law or regulation. Should, however, any provision of this agreement, at any time during its life, be in conflict with Federal or State law or regulation, then such provision shall continue in effect only to the extent permitted); *N. L. R. B. v. Red Star Express Lines*, 196 F. 2d 78, 81 (C. A. 2) (all clauses that are affected by the (T-H) law shall be considered null and void); *Gottfried Baking Co., Inc., et al. v. N. L. R. B.*, 210 F. 2d 772, 777, 780 (C. A. 2) (If • • • the closed shop is in conflict with the law, then the union shop shall prevail in such cases together with such additional provisions for union security as shall be legally permissible, it being the intent of the parties to grant the maximum union security permitted by law).

garded as creating an ambiguity as to the incorporation of the General Laws, which I do not believe they do, this ambiguity must be resolved in favor of the construction herein found, in view of the unlawful employment practices employed at the News and the Journal, as hereinafter detailed.[13]

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(b) *The contention that the word "members" as used in the General Laws should be read "journeymen"*

President Randolph testified that the word "members" in the General Laws has been changed to read "journeyman" wherever it relates to terms and conditions appearing in a contract. Nowhere in the General Laws is there any specific provision to support this interpretation. Nor has the ITU informed its locals or members of such an important change. Mailers' President Smollon testified that he does not remember ever having been notified by the ITU that "members" should be taken to mean "journeymen." Nor does the Constitution and By-Laws of the Mailers reflect any such change. Randolph's contention that the general savings language of Article XIV of the General Laws accomplishes this transformation, is obviously without merit.

Randolph's further testimony that under Article X, Sec. 2 of the General Laws, directing subordinate unions to establish a system for registering and recording priority standing of members in all chapels, the word "members" means "journeymen" and that the priority system operates

[13] *Utah Construction Co.*, 95 NLRB 196; *N. L. R. B. v. Scientific Nutrition Corp.*, 180 F. 2d 449 (C. A. 9).

on that interpretation, is rejected because it is contrary to all testimony given by representatives of the Mailers, the News and the Journal.

I find that this alleged change or interpretation is neither supported nor warranted by the record.

(c) *Mailers' contention that only the General Laws dealing with matters other than wages, hours and working conditions are incorporated by reference*

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This contention, termed by Mailers' counsel at the hearing as "very narrow and technical," is wholly unrealistic and contrary to the ITU's own interpretation. Thus, President Randolph defined the General Laws as being concerned only with "wages, hours and working conditions, to which we ask employers to subscribe as being the essence of the union shop." And in the ITU's instructions to locals on how to engage in collective bargaining, the identical language of Section 24 of the Mailers' contract is utilized as "a standard commitment for enforcement of I. T. U. laws" relating to employment matters (p. 9 of Intervenor's Exh. No. 9).

This contention is rejected.

(d) *Contention that the clauses in issue were found lawful in District Court contempt proceedings against the ITU*

The ITU contends that the Mailers' contract is "in all respects identical" to the New York publishers agreement which, in the District Court proceeding in October 1948, was

found by Judge Swygert not to be in contempt of the 10 (j) injunction.[14]

The Board of course is not bound by any statements of Judge Swygert that certain conduct did or did not violate the Act. Judge Swygert's jurisdiction was confined first, to determining whether there was reasonable cause to believe that the ITU violated the Act, and later, to determine whether actions of the ITU were in contempt of the 10 (j) injunction. Judge Swygert could not decide that any conduct was or was not an unfair

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labor practice affecting commerce because the Board is the sole agency empowered to make such determinations initially. Furthermore, a higher standard of proof is required to find conduct contemptuous than to find the commission of an unfair labor practice. Finally, the identical issues present in the instant cases were *not* litigated in the contempt proceedings. And such issues as were litigated were posed in a different posture. Nowhere in Judge Swygert's opinion is there a discussion of the effect of the incorporation clause or of the legality of the incorporated General Laws.

It is true that Judge Swygert found no contempt in the ITU's request that employers agree to the incorporation in a contract of a clause requiring the employer to employ only union members as foremen. His finding however was based on the conclusion that normally, it is not to be inferred, *in the absence of other proof*, that the employment of union foremen operates, *without more*, to establish closed shop or preferential hiring conditions. (Emphasis added.) Although Judge Swygert also indicated that language similar to Section 20-c of the Mailers' contract may be con-

[14] *Evans v. International Typographical Union*, 81 F. Supp. 675, 686.

strued as suspending the oath which binds union members as foremen, he stated that "it is highly speculative" whether this language will result in a foreman feeling free to disregard his oath in his personal relations on behalf of his employer.[15] In any event, the issue in the instant cases is not, as the General Counsel emphasizes, whether the mere contractual requirement that foremen be union members constitutes, *without more*, a violation of the Act. As previously found, this requirement is violative of the Act because, in view of the obligations of membership contained in the Mailers' Constitution and By-Laws and the ITU General Laws and of the unlawful employment practices followed in the mail rooms of the News and the Journal, its purpose and effect is to maintain closed shop and union controlled hiring practices. Thus, even the issue with respect to the union foremen clause, which is posed and decided in the instant cases, is not the same issue

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which was presented to, and decided by, Judge Swygert in the District Court contempt proceedings.

(c) *The contention that no violations may be found because of the ITU's instructions to local unions.*

The ITU introduced into the record documents which were sent to local unions and which contain the following instructions:

(1) A document, effective January 1, 1949, which states that the ITU Executive Council "has made it clear generally that only those union laws not in violation of the Taft-Hartley Act * * * are recognized as valid by not asking that

[15] *Ibid.* at p. 684.

any matters be governed by union laws which are in violation of any Federal or State Law." The document also notes that the "Executive Council • • • has also stated that the oath of obligation of foremen is suspended insofar as it may be construed to require discrimination against nonmembers. • • • It is recognized that these instructions are necessary, at least until final clarification of the legal issues involved in the cases now pending";

(2) Documents, dated December 18, 1950, and April 1, 1951, which announce a general intention not to violate the Act and the suspension of part of the member's oath requiring discrimination against nonmembers. They also declare that provisions of the General Laws contrary to public law are suspended as long as the public remains in effect and, as an example, specify that provision which requires all composing room employees to be members of the ITU;[15] and

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(3) Notices sent out with, or attached to, sample instructions distributed by the ITU, which contain general instructions to the locals not to violate the Taft-Hartley Act.

The ITU contends that no violations of the Act may be found in view of the instructions embodied in the foregoing documents. These documents appear to have been framed to meet the requirements of the 10 (j) decree or the Board decisions in the previous ITU cases involving the ITU bargaining demands, and not, as does the instant proceeding, the operation of the General Laws as incorporated in

[15] This is the only instance where a specific provision is pointed out. However, this provision does not include mail room employees, who are the ones involved in the instant cases.

the Mailers' contract and the practices thereunder. In general, they suffer from the same infirmity as do the savings clauses previously discussed. Thus, with the one exception, not applicable to the instant cases, the instructions not to violate the Act contain no guide to locals as to which specific provisions of the General Laws should not be followed. Nor did the ITU and the Mailers notify their members as to which General Laws and which sections of the Local's Constitution and By-Laws were in conflict with the Act. On the other hand, recent pronouncements of President Randolph to the effect that the action of the ITU was to preserve its traditional "union shop," are not qualified with any savings language. And neither the publishers of the News and the Journal, nor the Mailers took any specific action to amend their contracts to reflect the alleged change in the applicability of the General Laws; the contracts remain in force as originally executed.

In view of the foregoing factors, I find no merit in this contention.

(f) *The contention that the doctrine of the Pacific Intermountain Express case is erroneous and, in any event, distinguishable*

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The ITU contends that the contract provisions which delegate to the Mailers control over seniority of mail room employees as the basis for employment priority are not unlawful for the following reasons:

The ITU argues in its brief that "priority" as used in the printing industry is the same as "seniority" as used

elsewhere; that a union is entitled to bargain about this issue and reach agreement with respect to it, except one clearly discriminatory on its face; that the parties may agree that the union shall handle the entire matter or any portion of it; and that no discrimination may be presumed from such a delegation but must be specifically proven before a violation of the Act may be established. All that this adds up to is a contention, as counsel for the ITU frankly admits, that the *Pacific Intermountain Express Co.*, case, *supra*, is unsound and erroneous. The short answer to this is that, right or wrong, I continue to be bound by this and like decisions until the Board itself changes its position or the Supreme Court rules to the contrary.[17]

The ITU further contends that the instant cases are in any event distinguishable because the record shows that priority allegedly depends on the length of employment with a particular employer rather than on the date when union membership was acquired, as was the situation in the Pacific *Intermountain* case. However, the theory underlying this line of Board decisions (See cases cited in footnote 6, *supra*,) is that the potential to discriminate to encourage union membership is inherent in a complete delegation of this subject matter to a union, which vice is not cured even by the addition of a clause that the union will settle controversies without

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regard to union membership. And this is so even though the priority system covers only members of the ITU employed in the mail rooms.[18] Thus, as the General Counsel

[17] *Novak Logging Company*, 119 NLRB No. 196; *Scherrer and Davisson Logging Company*, 119 NLRB No. 197.

[18] *Radio Officers' Union, etc. v. N. L. R. B.*, 347 U. S. 17.

points out, the provisions in the ITU By-Laws (Art. IV, Sec. 19) and in the Constitution of the Mailers (Art. XV, Sec. 15), and the testimony of President Randolph and Journal Mail Room Foreman Every concerning the union's practices of barring a man from working because of dues delinquency or because of an infraction of a union law, demonstrates that the potential exists for such unlawful discrimination by the Mailers among its members as would encourage union membership.

4. Concluding findings

Upon the basis of the entire record, I find, in accordance with long and well established precedents, that by executing, maintaining and enforcing agreements containing provisions which create unlawful closed shop and preferential hiring arrangements, which delegate to the Mailers complete control over matters affecting employment seniority and priority for Mail Room employees, and which, under the circumstances disclosed by this record, require mail room superintendents and foremen to be union members, Respondent News has violated Section 8 (a) (1) and (3) of the Act[19] and Respondent Mailers has violated Section 8 (b) (1) (A) and (2) of the Act.

Under the *proviso* to Section 8 (a) (3) of the Act, the execution of an agreement containing union security provisions is unlawful unless, among other things, the union "has at the time the agreement was made or within the preceding 12 months received from the Board a notice of compliance with Sections 9 (f), (g) and (h)" of the Act. Admittedly, neither the Mailers nor the ITU have ever complied with these sections. Accordingly, I find, as further alleged in the complaint, that by executing the above-

[19] The complaint does not allege a violation of Section 8 (a) (2) of the Act.

described agreements with Respondent News on December 26, 1956, and with the publisher of the Journal on May 23, 1957, additional violations of Section 8 (a) (1) and (3) and Section 8 (b) (A) and (2) of the Act were committed by Respondents News and Mailers, respectively.[20]

B. *Unlawful employment practices*

The complaints allege that Respondent Mailers and Respondents News and Dow Jones have maintained and enforced an arrangement, understanding and practice, relating to hire and terms and conditions of employment of the mail room employees, whereunder the News and Dow Jones are (a) compelled and required to hire only members of the Mailers, (b) to accord preference in hiring and retention of employment to members of the Mailers and (c) delegate to Mailers the maintenance of the employment seniority and priority system of the mail room employees.

1. The employment practices

The employment practices in effect in the New York City mail rooms, of which those at the News and Journal are typical, follow closely the provisions of the ITU General Laws and the Mailers' Constitution and By-Laws. The priority system and the union foreman are the key factors involved in these practices, whereby the Mailers controls employment for its members and the maintenance and enforcement of closed shop and union preferential hiring conditions are assured.

[20] *Knickerbocker Plastic Co., Inc.*, 104 NLRB 514, 537, 515 (footnote 4); *Tacoma Harbor Lumber and Timber Co.*, 108 NLRB 912, 916; *N. L. R. B. v. Edwin D. Weymyss*, 212 F. 2d 465 (C. A. 9).

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The operation of the priority system is regarded as the sole function and responsibility of the Mailers, which is obligated to establish a priority system at all chapels. It is the duty of the chapel chairman to maintain an up-to-date priority list. *Only* the names of *union members* are permitted to appear on this list. These names are divided into two groups, regular situation holders and regular substitutes. Regular situation holders comprise the minimum crew or work force which will always be employed in the mail room. They go to work each night without going through any formal hiring procedure. The regular substitutes take the place of absent regular situation holders and are also hired as "extras" when the size of the paper requires the employment of additional mailers. They are hired in their priority order, which is determined by the date on which the union member deposited his union card with the chapel chairman. When a member physically deposits his card with the chapel chairman, the latter automatically places his name at the bottom of the substitute priority list, and makes a note of the date on which the card was deposited. The priority list, which the chapel chairman maintains, thus contains the names of all ITU members employed or available for employment on a permanent basis in the mail room, with their seniority dates.

The chapel chairman gives a copy of the priority list, without seniority dates, to the mail room foreman, who uses it as his order of hiring. He also advises the foreman of any changes in the priority list. The foreman then automatically employs the regular substitutes in the order in which they appear on the priority list.

If additional help is required for the evening's work after all substitutes have been employed, the foreman then hires men from a group of individuals comprised of members and nonmembers who "shape the shop," that is, apply for work at the mail room on either a regular or irregular basis.

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As among these shapers, the foreman *always gives preference to individuals who are ITU members*, even if they had never before worked at that particular shop, as against all nonunion shapers, including those who may have worked at that shop for years. These union shapers are known as "outside card" men, so called because their membership cards are deposited in different shops in which they have priority. If the foreman does not know whether a shaper is an outside card man, he will ask the chapel chairman or the shaper before hiring the full complement for the evening. At the News and the Journal, a priority of hiring exists even as among the outside card men. Thus, for example, regular substitutes from other shops who have received less than 5 days of work at the other papers are hired ahead of regular situation holders and substitutes who have worked their full time at the other papers but are seeking an additional night's work. Here again, either the chapel chairman or the outside card shaper will inform the foreman of his specific status, or the foreman himself will ask the shaper and hire in the order based on the information received.

If additional help is still required for the evening's work after all the outside card shapers have been hired, then, *and only then*, does the foreman hire nonunion shapers, also sometimes called "non-union extras." At the News and

the Journal, the foreman also maintains and follows a seniority list in hiring as among these nonunion shapers, known as the nonunion extra list, seniority being based on the date of first employment in the respective mail room. However, this seniority list for nonunion shapers is not part of the priority system maintained by the Mailers.

Most of the nonunion shapers at the News have regularly received work in the News mail room over a period of years, some as many as 10 years, and are familiar with and have regularly performed all the work done by the men on the union priority list, with the exception of work on mailing machines which is restricted to men on the priority list. Yet, when the foreman must hire beyond the regular substitutes, as he very frequently does,

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he is required to and does hire *any* outside card man shaping in preference to any nonunion shaper. During the vacation period in the summer of 1956, the foreman of the mail room at the Journal gave the chapel chairman a blanket authorization to call in substitutes to shape in order to insure against shortages due to absences among the men on the priority list. During that period, the chapel chairman called other shops to get union members, who then appeared for the shape and were hired by the foreman in preference to nonunion men shaping at the same time. Only when insufficient union men were available, did the chapel chairman try to contact nonunion men.

That the foregoing hiring practices could not be maintained without at least the cooperation of the foreman in charge of the hiring and operations of the mail room, is self-evident. The contract requirement that the foreman or superintendent in charge of the hiring and operations

of the mail room be a union member, is the means used to insure this cooperation. Control over the hiring and mail room operations at the News and the Journal is vested in Superintendent Rottenberg and Foreman Every, respectively. Neither has received any instructions from higher management as to how to conduct the hiring of employees or as to his limitations and duties. The publishers of the News and the Journal have acquiesced in the mail room hiring practices hereinabove described.

As required by the contract, Rottenberg and Every are union members in good standing. Both admitted that they are familiar with, and attempt to follow, the ITU General Laws and the Mailers' Constitution and By-Laws. Both admitted following the hiring practices hereinabove described. Rottenberg also specifically admitted following the priority requirements prescribed in Article 4 of the Mailers' By-Laws. Every specifically admitted that among the obligations in the Constitution and General Laws to which he

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attempts to adhere, is the one requiring a foreman to "give a break" to union members before "giving a break" to nonunion members. Rottenberg frankly admitted that "if they come in from outside shops and they have cards, they go to work ahead of the men without cards." On several occasions when an unusually large number of outside card men were shaping on the eve of a holiday because of the double pay involved, Randall, a nonunion regular shaper of 10 years standing, protested against this practice to Rottenberg. On those occasions, Rottenberg stated that there was nothing he could do about it because they were union men and he had to go to work ahead of the nonunion men.[21] The extent to which the foreman feels obligated to, and does,

[21] This finding is based on the credible and undisputed testimony of Randall.

adhere to Union policies is graphically demonstrated by the incident in July 1956, hereinafter set forth in detail, when Randall, a nonunion shaper at the News, was deprived of work because of Mailers President Smollon's instructions to Rottenberg, who told Randall that he was sorry but he had to follow the instructions of the union's president (Sec. III C. 1. *infra*).

In still one other important respect is the foreman's cooperation essential to enable the Mailers to cover the work in the mail room with union members. Thus, when the Mailers selects nonunion men for induction into union membership, which will automatically put them at the bottom of the priority list of regular substitutes and assure them of any available employment, the competency test by the "impartial" examiners, called for in the contract, is given by the Mailers' membership committee and the mail room foreman.

The manner in which 31 nonunion shapers at the News became union members in the spring of 1956 is a good example of the entire system in operation. In order to have its members cover the increased amount of work in the newspaper mail rooms, the Mailers decided to accept into membership 125 nonunion extras who were regularly working in the mail rooms an average

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of 3 days per week. After analyzing the data requested and received from the various publishers on the number of days worked by nonunion extras, the Mailers found that only 75 met this criteria. The Mailers' membership then voted to authorize the Mailers' officials to determine the criteria which would permit taking in the full quota of 125.

The publishers, including Respondent News, had nothing to do with the idea of enlarging the membership or the method by which eligibility for membership was to be determined. They merely cooperated in furnishing the requested data.

With respect to the News, the Mailers' officials decided that those nonunion extras who had earned credits for a total of 15 vacation days[22] in the years 1954 and 1955 would be given applications for union membership. This criteria was met by 31 of some 60 employees on the nonunion seniority list maintained by Superintendent Rottenberg. Only the 31 thus selected for membership, none of whom were apprentices, were then given the competency test by the "impartial" examiners consisting of the Mailers' membership committee and Rottenberg. Thereafter, a membership meeting was held on June 10, when all 31 were voted into membership in the Mailers. The chapel chairman then gave the 31 names to Rottenberg who automatically placed them on the union priority list at the bottom of the regular substitute section. Rottenberg testified that he "*had to*" place these 31 names on the regular substitute list because they were new members and had deposited their cards with the chapel chairman. Mailers' President Smollon testified that "they don't hit the priority list until we take them into membership." Prior to their admission into membership and placement on the substitute priority list, 30 of this group appeared on the nonunion seniority list *after* Randall, a nonunion regular shaper, and were hired *after* him. However, upon their placement on the substitute priority list, these 30 were hired not only ahead of any outside card man, but also *ahead* of Randall and all other nonunion men.

[22] Under the contract, vacation credits are based upon the number of days worked.

2. Respondents' contentions

Some of the respondents' contentions, previously discussed in connection with the unlawful provisions of the contract, may also be applicable to the employment practices; they have already been rejected as being without merit. The Respondents further contend that journeyman status or competency, and not union membership, is the basis for the hiring preference accorded in the mail room; that journeyman status is one of the conditions required to qualify as a union member; and that therefore all union members are presumed to be more competent than nonunion employees who have not attained journeyman status.

The record shows that the words "journeyman" and "competency" are never used in the mail rooms; employees and foremen speak only in terms of regular situation holders, regular substitutes, outside card men or union men, and nonunion extras. That competency is not regarded as a definite standard of proficiency, is demonstrated by the varying yardstick of vacation credits which were used to obtain the desired total of union members for each newspaper in 1956, as previously pointed out. On that occasion, the publishers themselves had made no request for additional journeymen nor indicated any need for upgrading those on the nonunion list, who were already regularly employed in the mail room, to the status of a regular substitute; presumably they were perfectly satisfied with the work force as it then existed. Moreover, the joint competency determination of the Mailers' membership committee and the mail room foreman is made only with respect to those employees who have previously been selected by the

Mailers for membership induction. Such a competency test is never given to a nonunion employee who is not a candidate for membership. Indeed, Foreman Every of the Journal could not conceive of a nonunion employee ever being as competent as a union employee. Thus, the 31 employees in the News' mail room who were inducted into membership in 1956, as previously discussed,

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thereby achieved no greater degree of competency than others who appeared with them on the nonunion list of extras. Yet, 30 of this group, who had previously been hired after Randall, were thereafter hired ahead of Randall, who outranked them in seniority but had not been given competency test because he had not been tapped for union membership. The flexibility of the "competency" concept and the fact that "competency" means whatever the Union wants it to mean at a particular time, is further demonstrated by the testimony of Mailers' President Smollon that on various occasions the apprentice training program was shortened to permit apprentices to take the above-described test, given by the Mailers' membership committee and the mail room foreman, whenever necessary to meet the needs of the Mailers for members to cover an increased amount of work.

On the other hand, the record contains affirmative evidence, some of which has been previously mentioned, pointing directly to the fact that union membership, and not competency, is the true test. Thus, when Randall complained to Rottenberg about the large influx of outside card men shaping on the eve of holidays, Rottenberg replied that there was nothing he could do about it, not because they were journeymen or more competent, but because they

were *union men and had to* go to work ahead of the nonunion men. Moreover, the 31 employees at the News admittedly "hit the priority list," not as soon as they passed the competency test and thereby achieved an alleged jounrneyman status, but only after they had been voted into membership at a union meeting.[23] Furthermore, according to the undisputed testimony of Foreman Every of the Journal, if a regular situation holder were expelled from the Union, he would lose his situation and place on the priority list. Finally, Every also admitted that as between a union and nonunion shaper, both of whom were equally competent, he would hire the union man first.

Upon the basis of the entire record, I am convinced and find that

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the term "journeymen" and "competency" are indiscriminately thrown over all union members as a shield behind which the unlawful closed shop and preferential hiring practices may be maintained and enforced.

3. Concluding findings

I find, as alleged in the complaint, that the Mailers and the News and Dow Jones have maintained and enforced an arrangement, understanding and practice whereby the News and Dow Jones are required to, and do, maintain and enforce unlawful closed shop and preferential employment conditions, and delegate to the Mailers the maintenance and control of employment seniority and priority for mail room employees. By such conduct, Respondents News

[23] Respondents' contention that the management of the News agreed to upgrade the 31 employees to regular substitute status and that the Mailers simultaneously stated it would admit all into membership, is contrary to the preponderance of the evidence and found to be without merit.

and Mailers have violated Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the Act, respectively.[24]

C. *Discrimination in hire and tenure of employment of Burton Randall and Julius Arrigale*

The complaints allege that the News and Dow Jones have discriminated in the hire and tenure of employment of Burton Randall and Julius Arrigale, respectively, by providing them with less employment than they normally would

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have received and by according preference in employment to members of the Mailers, all because Randall and Arrigale were not members of the Mailers. The complaints further allege that the Mailers caused and attempted to cause the News and Dow Jones to discriminate against Randall and Arrigale in this respect.

1. Burton Randall

Randall has been a regular nonunion shaper at the News mail room for over 10 years. Although he shaped 5 nights a week when he first started, the meager amount of work he received caused him to seek employment elsewhere and to confine his shaping at the News primarily to Friday and Saturday nights, the 2 busiest nights of the week. Randall performed the same kind of work as regular situation holders (except for machine operations), regular substitutes, and outside card men.

From about 1950 until June 10, 1956, Randall held the number three position on the seniority list, which Super-

[24] I find it unnecessary to determine, as contended in the General Counsel's brief, whether the *operation* of the apprentice system and of the contract provisions relating to competency are each *per se* unlawful.

intendent Rottenberg used to hire the nonunion extras. That meant that Randall was the third nonunion man hired after all the regular situation holders, substitutes and outside card men had been hired.

On June 10, 1956, 30 individuals, who ranked *below* Randall on this nonunion seniority list, were inducted into membership in the Mailers and placed at the bottom of the substitute section on the Union's priority list, as previously described (See Section III B. 1, *supra*). This meant that after June 10, these 30 new regular substitutes had to be, and in fact were, hired prior to any outside card men and any nonunion men. Although Randall soon attained the number one position on the nonunion list,[25] the 30 new regular substitutes, who previous to June 10, had been hired *after* Randall, continued to be hired *before* him.

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Randall continued to receive employment in his new seniority order whenever he shaped on Friday and Saturday evenings. However, Randall's reduction in seniority in the above described manner, resulted in (1) his being hired for a later starting time, and thus finishing work at a later hour, (2) his receiving more difficult and tedious work, and (3) the real possibility of not being hired at all should the number of outside card men satisfy Rottenberg's needs.[26]

On June 25, 1956, Randall filed the instant charges with the Board against Respondents News and Mailers.

[25] Of the two men who had been ahead of Randall, one had been taken into membership along with the group of 30, and the other dropped out because of illness.

[26] Randall also claimed that he received less overtime because of his reduced seniority standing.

During 1955 and up to July 22, 1956, Randall had also shaped about 10 to 12 times on nights other than Friday and Saturday. On those occasions, he was accorded the same priority standing as on Friday and Saturday, that is, he was the third nonunion man to be hired prior to June 10 and the first nonunion man after that date. Thus, on Sunday, July 15, Randall was the first nonunion man to be hired.

On Friday July 20, Mailers' President Smollon visited the mail room of the News and spoke to Rottenberg about Randall's hiring the previous Sunday, July 15. Smollon instructed Rottenberg to put Randall to work last, after all nonunion shapers had been put to work, on nights other than Friday

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and Saturday.[27] When Randall shaped the following Sunday, July 22, Rottenberg called him into the office and told him that he had "orders from the president of the Union" to put Randall "to work last after all other nonunion men every night except Friday and Saturday." Rottenberg also added, "I am sorry about this, but I have to follow my instructions."[28] As the number of men shaping that night was more than enough to fill the available work, Randall left the premises. Rottenberg admitted that Randall would

[27] This finding is based on the testimony of Rottenberg and his admissions contained in his sworn affidavit, executed only a few days after the conversation occurred. *Grove Shepard Wilson & Drugs, Inc.*, 109 NLRB 209, 212, & ff; *Myles Worstell et al.*, 114 NLRB 503, ft. 3 of IR. Smollen admitted talking to Rottenberg about Randall's Sunday hiring but denied telling Rottenberg not to put Randall to work in his priority spot on nights other than Friday or Saturday. He testified that he had merely stated that in his experience the News had taken the position that a man acquires priority only for those nights on which he shapes with regularity. I do not credit Smollon's contrary testimony.

[28] These findings are based on Randall's credible testimony, which is corroborated by the admissions contained in Rottenberg's sworn affidavit.

not have been hired that night if he had stayed until the end of the shape because, after putting some nonunion men to work, others were sent away. He further admitted that, on the other hand, Randall would have been hired that night if he had been accorded his usual seniority spot.[29]

Randall has continued to shape and receive work on Fridays and Saturdays since the July 22 incident. However, although he had intended to shape on nights other than Friday and Saturday, he has not done so because there is virtually no chance of receiving employment if he were to be hired only after all other nonunion men. As Randall put it, "to make the trip in from Long Island and not to go to work would have been rather foolish."

Respondents' contentions and concluding findings

It is clear from the foregoing, and I find, that the reduction of Randall's Friday and Saturday night seniority was a direct result of the operation of the unlawful preferential hiring system. The Respondents Mailers and News are therefore both liable for the discrimination in the terms and conditions of employment suffered by Randall in this respect.

It is equally clear, and I find, that the failure of the News to hire Randall on July 22, 1956, and Randall's loss of seniority on nights

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other than Friday and Saturday, were directly caused by the instructions of Mailers' President Smollon to Rotten-

[29] These admissions appear in Rottenberg's sworn affidavit, hereinabove mentioned.

berg. In view of (1) the fact that Randall had been hired in his usual seniority spot when he shaped on nights other than Friday and Saturday in 1955 and 1956, (2) Rottenberg's statement to Randall that Rottenberg acted in this manner solely because of Smollon's instructions which he had to follow, and (3) the position of the News and the Mailers, frequently emphasized, that the Mailers had nothing to do with the maintenance and operation of the non-union seniority list, I must reject the contention that Smollon's conduct was motivated by his belief that, according to the practice of the News, Randall was entitled to his seniority spot only on Friday and Saturday, his two regular nights. On the other hand, I cannot ignore the fact that the only significant event which occurred shortly before Randall's change in status was his filing of the charges in the instant case. Upon the basis of the entire record, I am convinced and find that Smollon's instructions to Rottenberg were in reprisal for Randall's conduct in having filed the instant charges against the Mailers and the News. Under these circumstances, Randall's loss of seniority and failure to be hired on July 22, constituted an employment discrimination which encourages retention of union membership and support of the Mailers.[30]

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I find that, by the foregoing conduct with respect to Randall, Respondents News and Mailers violated Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the Act, respectively.

[30] See, *e.g. Southern Bleachery & Print Works, Inc.*, 118 NLRB, No. 33.

2. Julius Arrigale

The Journal is a smaller paper than the News, both in production and manpower demands. It is a five-day-a-week publication, Mondays through Friday only. However, the same method and system of hiring, with minor variations, is employed in the mail room. From the information on the Union's priority list, Foreman Every prepares and has printed a form, called a "sign-up sheet," which contains only the names of the regular situation holders and regular substitutes. When the hiring begins, the regular situation holders sign the list in the box containing their printed names. The foreman, or the chapel chairman, then tells the regular substitutes, in their priority order, to sign the sheet in the place of absent regular situation holders. If the size of the paper requires more than the minimum crew, which the regular situation holders constitute, additional men are hired first from among the regular substitutes, and then from among the outside card men shaping. If there are not enough outside card men to fill the evening's requirements, then, *and only then*, are nonunion shapers hired. All employees hired for the evening sign the sign-up sheet.

During the summer of 1956, Arrigale was the oldest nonunion extra, regularly shaping at the Journal mail room. He had begun applying for work in late 1954. Thereafter, he shaped the mail room steadily for 5 nights per week, missing only two nights. However, he was hired only for a total of 17 shifts in 1955 and 23 shifts in 1956.

During 1956, while Arrigale was shaping, several outside card men,

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who had not previously worked at the Journal, deposited their cards with the chapel chairman and were automatically placed on the Union's priority list as regular substitutes. During the vacation period of 1956, as previously described (See Section III B. 1. *supra*), the chapel chairman with a prior blanket authorization from the foreman, called other shops for outside card men, who would then be hired ahead of nonunion men, to fill any vacancies due to absences among the regular complement of priority men. Although Arrigale was shaping steadily during this period, he was hired for only 12 shifts from June to September. Foreman Every specifically admitted than on September 18 and 19, an outside card shaper was hired in preference to Arrigale who was also shaping on those nights.

The charges in the instant proceeding against the Mailers were filed with the Board by Arrigale on September 17, 1956. Shortly thereafter, he stopped shaping at the Journal.

Respondents' contentions and concluding findings

I find no merit in the Mailers' contention that outside card shapers were sought and hired in preference to Arrigale because the latter's work was unsatisfactory. While he may not have been the best worker, he performed tasks which were done by the outside card men who were hired ahead of him. Significantly, Foreman Every admittedly never told Arrigale that his work was unsatisfactory. Indeed, Every testified that Arrigale would have received work if he had continued to shape.

Upon the basis of the entire record, I am convinced and find that the reduction in Arrigale's work opportunities was the direct result of the unlawful preferential hiring system. I therefore find that Respondent Mailers caused

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Dow Jones, the publisher of the Journal, to discriminate with respect to the hire and tenure of employment of Arrigale, thereby encouraging membership in the Mailers. By such conduct, Respondent Mailers violated Section 8 (b) (1) (A) and (2) of the Act.

IV. The Effect of the Unfair Labor Practice Upon Commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Companies described in Section I, above, have a close, intimate, and substantial relation to trade; traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have engaged in unfair labor practices, I will recommend that each of them cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Only the unlawful provisions of the contract are to be effected by his order.

With respect to the contract and the unlawful employment practices, the General Counsel urges that the Recommended Order should also provide as follows:

(a) The contract provision requiring foremen or mail room superintendents, who hire, to be members, should not be enforced as long as they are obligated to comply with the provisions of the ITU General Laws and the Mailers Constitution and By-Laws, calling for closed shop or union

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preferential hiring;

(b) The incorporation clause of the contract should be modified to specify therein those provisions of the General Laws which do not conflict with the Act;

(c) Members of the Mailers in mail rooms within the Board's jurisdiction, and employees in the mail room of the News, should be advised in a direct and specific manner that they are relieved of any obligation to comply with, and will not be bound to follow, designated General Laws or provisions in the Mailers Constitution and By-Laws which require closed shop or union preferential hiring or otherwise conflict with the Act.

As the ITU and the Mailers contend that the contract does not incorporate any unlawful General Laws, there is no basis for objecting to a requirement that they clarify that very fact. The contention that it would be virtually impossible to specify which laws are or are not incorporated in a specific contract, underestimates the ingenuity of counsel. A requirement similar to that proposed in paragraph (c), above, is necessary to disabuse employees and members of any understanding or belief, which could reasonably be acquired from the contract incorporation clause, that they were obligated to follow the incorporated General Laws herein found to be unlawful. Under all the circumstances I believe that provisions similar to those proposed

by the General Counsel are reasonably adapted to the situation calling for redress. Accordingly, I will make substantially similar recommendations.

With respect to Randall, I will include the following remedies in my Recommended Order. His seniority should be restored to that which he held on all nights, prior to the discrimination practiced against him on June 10 and July 22, 1956. He should be made whole for any loss of earnings incurred on July 22, 1956, as a result of the discrimination against him, in

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accordance with established Board formulae. I believe that the General Counsel has not sustained the burden of proof to warrant a finding that any diminution in Randall's overtime work after June 10, was directly due to Respondent's discriminatory employment practices. Although I agree with the General Counsel's contention that it would have been a futile act for Randall to have shaped on nights other than Friday and Saturday after July 22, I nevertheless feel that, in view of Randall's intermittent shaping in the past on such nights, it would be highly speculative to determine when and how long Randall would have shaped on such other nights, even absent the discrimination practiced against him on July 22. Accordingly, I do not believe that any further back pay award is warranted in this respect.

With respect to Arrigale, the General Counsel urges that the Order contain a provision requiring that Arrigale be ranked for hiring along with any other individual who regularly shapes the Journal mail room, including outside card holders, without regard to membership or nonmembership in the Mailers. It should be born in mind that no

Remedial Order may be issued against Dow Jones because it is not a Respondent in these cases. However, I believe that other general provisions directed against the Mailers will accomplish this objective also. The record does show that the unlawful hiring practices deprived Arrigale of employment, and specifically was this the case on September 18 and 19, 1956. I will, accordingly, recommend that he be made whole by the Mailers for loss of wages incurred since March 18, 1956, as a result of such unlawful hiring practices. Except for September 18 and 19, 1956, the extent of such losses will have to be determined in subsequent compliance proceedings. Such earnings shall be computed in accordance with Board established formulae.

On the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

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CONCLUSIONS OF LAW

1. By executing, maintaining, and enforcing a written agreement, and by maintaining and enforcing an arrangement, understanding and practice, under which employment in the mail room is conditioned on union membership, preference in employment is accorded to union members, and the maintenance of the employment seniority and priority system is delegated to the Mailers, Respondents News has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, and Respondent Mailers has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

2. By discriminating with respect to the hire, tenure, and terms and conditions of employment of Burton Ran-

dall, Respondent News has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. By causing Respondent News unlawfully to discriminate against Burton Randall, and by causing Dow Jones to discriminate with respect to the hire and tenure of employment of Julius Arrigale within the meaning of Section 8 (a) (3) of the Act, Respondent Mailers has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that:

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I. The Respondent, News Syndicate Company, Inc., its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining, or enforcing, the provisions of a written agreement with New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, or maintaining or enforcing any arrangement, understanding or practice with the above-named Union, under which employment in the mail room is conditioned on union membership, preference in employment is accorded to union members, and the control and mainte-

nance of the employment seniority and priority system is delegated to said Union, except where, and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foreman and superintendents, who do the hiring, to be union members, unless and until said foreman and superintendents have been directly informed by the above-named Union and the ITU that they are not obligated to comply with specified provisions of the ITU General Laws and the said Union's Constitution and By-Laws calling for closed shop or union preferential hiring;

(3) Encouraging membership in or support of the above-named Union, or any other labor organization of its employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted under Section 8 (a) (3) of the Act;

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(4) In any like or related manner interfering with, restraining or coercing its employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Specify, in Section 24 of the current contract with the above-named Union, either the specific lawful

provisions of the ITU General Laws which are incorporated therein, or the specific provisions which are not incorporated because in conflict with the Act;

(2) Notify all mail room employees that they are not bound to follow the specific provisions of the ITU General Laws which call for a closed shop or union preferential hiring. Such notice shall be in addition to that conveyed by the posting of the notices specified in paragraph 6, below;

(3) Restore the seniority status of Burton Randall to that which he held on all nights prior to the discrimination against him on June 10 and July 22, 1956;

(4) Make whole Burton Randall for loss of earnings he suffered on July 22, 1956, as a result of the discrimination against him;

(5) Preserve and make available to the Board or its agents upon request, for examinations or copying, all payroll records, social security payment records, timecards, personnel records, reports, and all other records necessary to analyze the amount of back pay due under the terms of this Recommended Order;

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(6) Post, at its place of business in New York, New York, copies of the notice hereto attached and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to its mail room employees are customarily

posted, and maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(7) Notify the Regional Director for the Second Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

II. The Respondent, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining or enforcing, or causing or attempting to cause the publishers of the News and the Journal, or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, or maintaining or enforcing any arrangement, understanding or practice with the publishers of the News and the Journal, or any other publisher in New York City, under which employment in the mail room of said publishers is conditioned on union membership, preference in employment is accorded to union members, and the control and maintenance of the employment seniority and priority system is delegated to Respondent Union, except where,

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and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foremen and superintendents,

who do the hiring, to be union members, unless and until said foreman and superintendents have been directly informed by Respondent Union and the ITU that they are not obligated to comply with specified provisions of the ITU General Laws and Respondent Union's Constitution and By-Laws calling for closed shop or union preferential hiring;

(3) Causing, or attempting to cause, the publishers of the News and the Journal, or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act;

(4) In any like or related manner restraining or coercing employees of, or applicants for employment by, the publishers of the News and the Journal, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement under Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Specify, in Section 24 of the current contract with the News and Dow Jones, either the specific lawful provisions of the ITU General Laws which are incorporated therein, or the specific provisions which are not incorporated because in conflict with the Act;

(2) Notify all its members that, in connection with their employment in the News mail room, in the Journal

mail room of Dow Jones, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the ITU General Laws which call for closed shop or union preferential hiring. Such notice shall be in addition to that conveyed by the posting of the notices specified in paragraphs 5 and 6, below;

(3) Make whole Burton Randall for loss of earnings he suffered on July 22, 1956, as a result of the discrimination against him;

(4) Make whole Julius Arrigale for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him;

(5) Post, in conspicuous places in its business office in New York, New York, copies of the notice hereto attached and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by an authorized representative of the Respondents Union, be posted by it immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(6) Additional copies of the notices, hereto attached as "Appendix B," shall be signed by a representative of the Respondent Union and forthwith returned to the Regional Director for the Second Region. These notices shall be posted, the News and Dow Jones willing, in places where notices to the employees of the mail room at the

News and Journal are

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customarily posted;

(7) Notify the Regional Director for the Second Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent Union has taken to comply herewith.

It is further recommended that, unless the Respondents shall within twenty (20) days from the date of the receipt of this Intermediate Report notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board, issue an order requiring each or all of the Respondents, as the case may be, to take the action aforesaid.

Dated at Washington, D. C., this 15 day of April 1958.

LOUIS LIBBIN,
Trial Examiner.

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APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT execute, give effect to, maintain or enforce, the provisions of our written agreement with NEW YORK MAILERS' UNION NO. 6, INTERNA-

Appendix A attached to Intermediate Report and Recommended Order.

TIONAL TYPOGRAPHICAL UNION, AFL-CIO. nor will we maintain or enforce any arrangement, understanding or practice with the above-named Union, under which employment in the mail room is conditioned on union membership, preference in employment is accorded to union members, and the control and maintenance of the employment seniority and priority system is delegated to said Union, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT enforce or give effect to the provision in our agreement with the above-named Union, requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by said Union and the ITU that they are not obligated to comply with specified provisions of the General Laws and the above-named Union's Constitution and By-Laws calling for closed shop or union preferential hiring.

WE WILL NOT encourage membership in or support of the above-named Union, or any other labor organization of

our employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of rights guar-

anteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

WE WILL specify, in Section 24 of our current agreement with the above-named Union, either the specific lawful provisions of the ITU General Laws which are incorporated therein, or the specific provisions which are not incorporated because in conflict with the Act.

WE WILL notify all our mail room employees that they are not bound to follow the specific provisions of the ITU General Laws which call for closed shop or union preferential hiring.

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WE WILL restore the seniority status of BURTON RANDALL to that which he held on all nights prior to the discrimination practiced against him on June 10 and July 22, 1956.

WE WILL make whole BURTON RANDALL for loss of earnings which he suffered on July 22, 1956, as a result of the discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act, as amended.

NEWS SYNDICATE COMPANY, INC.
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B attached to Intermediate Report and Recommended Order.

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APPENDIX B

NOTICE TO ALL MEMBERS OF NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, AND TO EMPLOYEES OF NEWS SYNDICATE COMPANY, INC., AND DOW JONES & COMPANY, INC.

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL not execute, give effect to, maintain or enforce, or cause or attempt to cause NEWS SYNDICATE COMPANY, INC., DOW JONES & COMPANY, INC., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, nor will we maintain or enforce any arrangement, understanding or practice with the above-named or with any other publisher in New York City, under which employment in the mail room of said publishers is conditioned on union membership, preference in employment is accorded to union members, and the control and maintenance of the employment seniority and priority is delegated to our Union, except to the extent permitted by Section 8 (a) (3) of the Act.

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WE WILL NOT enforce or give effect to the provision in our agreement with DOW JONES & COMPANY,

INC., and with the PUBLISHERS' ASSOCIATION OF NEW YORK CITY, including the News, requiring mail room foremen or superintendents, who do the hiring, to be members of our Union, unless and until said foremen and superintendents have been directly informed by our Union and the ITU that they are not obligated to comply with specified provisions of the General Laws and our Constitution and By-Laws, which call for closed shop or preferential hiring.

WE WILL NOT cause or attempt to cause NEWS SYNDICATE COMPANY, INC., DOW JONES & COMPANY, INC., or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of, or applicants for employment by, the News, Dow Jones, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

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WE WILL specify, in Section 24 of our current agreement with DOW JONES & COMPANY, INC., and with the PUBLISHERS' ASSOCIATION OF NEW YORK CITY, either the specific lawful provisions of the ITU General Laws which are incorporated there-

in, or the specific provisions which are not incorporated because in conflict with the Act.

WE WILL notify all our members that, in connection with their employment in the News mail room, in the Journal mail room of Dow Jones, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the ITU General Laws which call for closed shop or union preferential hiring.

WE WILL make whole BURTON RANDALL for loss of earnings he suffered on July 22, 1956, as a result of the discrimination against him in connection with his employment in the mail room of the News.

WE WILL make whole JULIUS ARRIGALE for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him in connection with his employment in the Journal mail room of Dow Jones.

NEW YORK MAILERS' UNION NO. 6 INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

General Counsel's Exceptions to Intermediate Report.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual,
and
THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract.
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

GENERAL COUNSEL'S EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS AND IN SUPPORT OF THE INTERMEDIATE REPORT.

On April 15, 1958, Trial Examiner Louis Libbin issued his Intermediate Report and Recommended Order wherein he found that Respondent News and Respondent Mailers had engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively.

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Although the Trial Examiner sustained generally the allegations of the complaints and accepted the theories advanced by the General Counsel, on certain issues the Trial Examiner either failed or declined to make the findings requested. In addition, the General Counsel believes that certain findings and recommended remedies require clarification.

The General Counsel therefor respectfully urges the Board to adopt the Trial Examiner's findings and recommendations to which the General Counsel takes no exceptions because they are supported by an overwhelming preponderance of the credible evidence. The Board is also requested to make certain additional findings and to order the appropriate remedy, as set forth below, which the Trial Examiner failed to do.

In support of the below exceptions and of the Intermediate Report generally, the General Counsel respectfully requests the Board to consider the Brief of the General Counsel to the Trial Examiner, which Brief the undersigned respectfully resubmits herewith:[1]

[1] This document will be referred to herein as the Brief.

EXCEPTION No. 1: The Trial Examiner erred in not finding that the operation of the apprentice system and of the contract provisions relating to competency were unlawful (IR, p. 18, ll. 59-61).

As set forth in detail on pages 22-25 of the Brief, the evidence demonstrates that the apprentice and competency systems are operated as integral parts of the closed shop and preferential employment conditions in effect in the mail rooms of the News and Journal. By not making specific findings of unfair labor practices and recommending remedies, the Trial Examiner has in effect permitted the parties to continue these practices until they are again made the subject of a charge or complaint, if ever at all. Where, as here, an unlawful employment and hiring system comprises various interlocking practices, a complete rather than partial remedy is required.

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EXCEPTION No. 2: The Trial Examiner erred in holding that the General Counsel had not sustained the burden of proof to warrant a finding that any diminution in Randall's overtime work after June 10, 1956, was directly due to the discriminatory employment practices in effect at the mail room of the News. (IR, p. 23, ll. 1-4).

The General Counsel contends that the credible testimony in the records supports the finding that the diminution of Randall's overtime work after June 10, 1956, resulted from Randall's loss of seniority on June 10, 1956, which loss the Trial Examiner found to be caused by the unfair labor practices of the News and Mailers. Thus, Randall's uncontradicted testimony is to the effect that his overtime work came on Saturdays; that prior to June

10, 1956, he averaged at least three to four overtime hours per month; that since June 10, 1956, he had a total of five overtime hours for the next six months; and that during 1957, he worked only about two or three hours of overtime. Most important, however, is his undisputed and uncontradicted testimony that the seniority position which he occupied prior to June 10, 1956, enabled him to "get a good head start on overtime" (TR. 68, 159-160, 195-196, 229). The above evidence warrants the finding that that Randall's diminution of overtime work after June 10, 1956, was directly attributable to the discriminatory loss in seniority caused by the Respondent Mailers and the Respondent News, and the General Counsel respectfully requests the Board to so find and to order reimbursement for this loss.

EXCEPTION No. 3: The Trial Examiner erred in failing to find that the contractual requirements that foremen and superintendents be members of the Union, when taken in conjunction with the obligations of members set forth in the I. T. U.'s constitution and general laws and in Mailers' constitution and bylaws, constitutes unfair labor practices, without considering whether or not unlawful employment practices were followed in the mail rooms of the News and of the Journal. (IR. p. 9, ll. 25-28; p. 12, ll. 24-29).

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The purpose of this exception is to clarify the Trial Examiner's findings. The Trial Examiner did find that the contractual requirements were in fact illegal under the *Enterprise Industrial Piping*[2] case. However, in delineating the scope of the unfair labor practice found,

[2] Enterprise Industrial Piping Company, 117 NLRB 995, 996.

General Counsel contends that the Trial Examiner inadvertently made it appear that his finding of unfair labor practice based on the provisions of the contract and the various constitutions and bylaws depended upon the finding that the actual employment practices were unlawful. For the reasons set forth in the General Counsel's brief, which reasons were apparently accepted by the Trial Examiner, it is submitted that in connection with the foreman-superintendent issue, *separate* violations should be found based, first, upon the provisions of the contract requiring membership in the Mailers coupled with the provisions of the I. T. U.'s constitution and general laws and the Mailers' constitution and bylaws requiring preference to members in employment, and second, upon the actual employment practices pursued by the foreman and superintendent.

EXCEPTION No. 4: In framing the cease and desist order against the News and the Mailers, the Trial Examiner should more properly have used the disjunctive in enumerating the acts from which he was requiring the News and Mailers to cease and desist. Thus, on page 24 of the Intermediate Report, Lines 10, 11 and 12 should read as follows: "under which employment in the mail room is conditioned on union membership, or preference in employment is accorded to union members, *or* the control and maintenance of the employment seniority and priority system is delegated to * * *". On Page 25 of the Intermediate Report, lines 28 and 29 should read as follows: "* * * is conditioned on union membership, *or* preference in employment is accorded to union members, *or* the control and maintenance of the employment * * *". The separate enumeration of these acts is both necessary and advisable to insure that

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the cease and desist order will in fact reach all of the unfair labor practices found by the Trial Examiner.

EXCEPTION No. 5: The General Counsel believes that the provisions for notifying mail room employees and members that they are not bound to follow the specific provisions of the I. T. U. general laws which call for closed shop or union preferential hiring (IR. p. 24, ll. 45-49; p. 26, ll. 1-8), would be more effective if the provisions of the Order were changed to read "bound to follow the provissions of the I. T. U. general laws which called for closed shop or union preferential hiring, as specified in Appendix —, attached hereto and made a part hereof." This appendix should contain the provisions of the general laws which the Board found to be unlawful. General Counsel believes that the Board's Order should be as specific as possible on this point in order that members and employees will have brought home to them the full impact of the Board's decision.

CONCLUSION

For the reasons stated above, and based upon the Brief of the General Counsel, it is respectfully requested that the Board affirm the findings of unfair labor practices already made by the Trial Examiner, with the modifications requested by the General Counsel, and make the additional findings requested by the General Counsel.

Respectfully submitted,

HAROLD L. RICHMAN,
Counsel for the General Counsel,
National Labor Relations Board,
2 Park Avenue,
New York 16, N. Y.

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To:

National Labor Relations Board,
Washington 25, D. C.

Townley, Updike, Carter and Rodgers, Esqs.,
220 East 42nd Street,
New York 17, N. Y.

Sidney Sugarman, Esq.,
295 Madison Avenue,
New York 17, N. Y.

Gerhard P. Van Arkel, Esq.,
1701 K Street, N. W.,
Washington 6, D. C.

The Wall Street Journal,
Dow Jones Company, Inc.
44 Broad Street,
New York 4, N. Y.

Mr. Burton Randall,
34 Centre Drive,
Syosset, L. I., N. Y.

Mr. Julius Arrigale,
541 East 147th Street,
Bronx 55, N. Y.

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Decision and Order.

D-506
New York, N. Y.

UNITED STATES OF AMERICA

BEFORE THE

THE NATIONAL LABOR RELATIONS BOARD

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual,
and
THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

—o—

Decision and Order.

On April 15, 1958, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled, consolidated proceeding finding that News Syndicate Company, Inc., the Respondent Company, and New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, the Respondent Union, had engaged

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in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Union and its parent organization, International Typographical Union, AFL-CIO,[1] an Intervenor herein, jointly filed exceptions to the Intermediate Report and a supporting brief. The General Counsel filed exceptions to some portions of the Intermediate Report and a brief in support of those exceptions; the General Counsel's brief otherwise supported portions of the Intermediate Report to which he did not except. On October 21, 1958, the Board heard oral argument; the General Counsel and Unions participated.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, the oral argument, and the entire record in the case, and hereby adopts the findings, conclusions and

[1] Hereafter, jointly called the Unions.

recommendations of the Trial Examiner, as hereafter modified.[2]

1. The Trial Examiner found that the Respondent Union, the Respondent News, and the Wall Street Journal (Dow Jones) "have maintained and enforced an arrangement, understanding and practice whereby the News and Dow Jones are required to, and do, maintain and enforce unlawful closed shop and preferential employment conditions, and delegate to the * * * [Respondent Union], * * * the maintenance and control of employment seniority and priority for mail room employees." The Trial Examiner thereupon concluded that the Respondent News and the Respondent Union, respectively, violated Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the Act. In reaching this conclusion, however, the Trial Examiner found it unnecessary to determine "whether the *operation* of the apprentice system and of

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the contract provisions relating to competency are each *per se* unlawful." The General Counsel has excepted to the Examiner's failure to make that determination.[3]

The Board adopts the Trial Examiner's conclusion that Respondent News and Respondent Union have violated the Act by their practice of maintaining "unlawful closed shop and preferential employment conditions" and delegating

[1] The Board hereby corrects 3 inadvertent typographical errors appearing in the Intermediate Report. (1) The cases herein were consolidated for purposes of hearing on July 29, 1957. (2) During the 1956 vacation period, the chapel chairman at the Wall Street Journal mail room called other shops for outside card men, who were then hired (not fired, as stated in the Intermediate Report) ahead of nonunion men. (3) Arrigale was hired by the Wall Street Journal for a total of 22 shifts in 1956.

[2] The General Counsel has not, however, questioned the legality of the provisions of the collective bargaining contract involved in this case which are the source of the apprenticeship and competency systems.

to the Respondent Union "control of employment seniority and priority for mail room employees." The Board does not, however, agree with the Examiner's finding that it is unnecessary to decide whether the operation of the apprenticeship and competency systems are also unlawful.

The Respondents' illegal practice, as found by the Trial Examiner, consisted fundamentally of permitting only the Respondent Union's members to hold certain relatively regular jobs in the mail rooms and of favoring other members for less regular jobs which were filled by "shape-up" hiring. In order to continue and preserve that practice, the Respondents also developed procedures for maintaining a flow of the Respondent Union's members to fill job openings in the mail rooms. Those procedures were inextricably a part of the illegal practice and critical to its perpetuation; those procedures were the apprenticeship and competency systems. Thus, the collective bargaining agreement involved in this proceeding provides that only journeymen and apprentices shall be employed in the News and Wall Street Journal mail rooms. During the critical period covered by the unfair labor practice charges filed herein, a mail room worker could reach journeyman status by but 2 access routes—either by completing an apprentice training program or by passing a qualifying (competency) examination.

Review of the apprentice training program at the News and Wall Street Journal mail rooms shows that, in practice, the Respondent Union gave initial approval to all persons seeking to enter the mailers' trade as apprentices. The approval was exercised through the mail room foremen who had exclusive control of hiring apprentices. The foremen, in turn, were under the control of the

Respondent Union because of their contractual obligation to remain members in good standing of that Union.[4]

Review of the operation of the competency system shows that the examination for prospective journeyman was given by "impartial examiners qualified to judge journeyman competency." The "impartial examiners" were, in fact, officials of the Respondent Union and the mail room foremen. As stated above, those foremen had to be members in good standing of the Respondent Union. Thus, the "impartial examiners" who gave the competency tests were all under the control of the Respondent Union.[5] It is also enlightening that, when the Respondent Union decided that more journeymen were required for work in the mail rooms, the prescribed 6-year apprenticeship training program was substantially curtailed to permit apprentices to take the competency test. Thus, apprentice trainees, all of whom had the Respondent Union's prior stamp of approval, were permitted to achieve journeyman status in less than their prescribed training period.

Upon the above-described facts and the entire record herein, the Board is convinced that the operation of the apprenticeship and competency systems were the initial devices whereby the Respondents assured to the Respondent Union control over the flow of new employees into the Employers' mail rooms. The Board finds that by the operation of the apprenticeship and competency programs in the News and Wall Street Journal mail rooms, the Re-

[4] The 2 foremen of the News and Wall Street Journal mail rooms have, in essence, admitted that their exclusive control over hiring in their mail rooms conformed to the hiring practice herein found to be unlawful.

[5] In this regard, the record fails to reveal a single worker given the competency test who was not a candidate for membership in the Respondent Union.

spondent News and the Respondent Union gave unlawful preference for jobs to members of the Respondent Union, thereby also, respectively, violating Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the Act.

2. The Trial Examiner found that the provision in the Respondent Union's bargaining agreement with Respondent News and the Wall Street Journal which required mail room foremen to be members of the Respondent Union was for the unlawful purpose of maintaining "closed shop and union controlled hiring

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practices"—in view of the prevailing unlawful hiring practices in the mail rooms. The General Counsel has excepted. He asserts that the contract provision requiring mail room foremen to be ITU members, considered together with the obligations of ITU members contained in the ITU's General Laws and the constitution and in the Respondent Union's constitution and bylaws, constitute unlawful control of employee hiring, without reference to the unlawful hiring practice.

Under the terms of the contract, including various incorporated portions of the ITU's General Laws, (1) the Employers were limited by their bargaining agreement to hire only active members of the Respondent Union as mail room foremen; (2) the Respondent Union had the power to control the foremen's actions because the foremen had to be members of the Union in good standing obligated to comply with the Union's constitution and bylaws; and (3) the foremen had exclusive authority to hire employees in the Employers' mail rooms. Such provisions establish that the News and the Wall Street Journal had "virtually divested themselves of their hiring and placement func-

tions * * * and abdicated such functions to the Respondent Union * * *;" and they constitute an agreement delegating to the Union exclusive control over mail room hiring.[6] As that agreement does not satisfy the *Mountain Pacific*[7] standards for a lawful exclusive hiring agreement in favor of a union, the Board finds that the contract provisions establishing the hiring agreement are unlawful as written—that is, without reference to the hiring practice in effect in the News and Wall Street Journal mail rooms.[8]

THE REMEDY

The Trial Examiner found that the Respondents discriminatorily reduced Randall's Friday and Saturday night job seniority and recommended that Randall's

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seniority be restored "to that which he held * * * prior to the discrimination practiced against him on June 10 * * * 1956." However, as he believed that the General Counsel did not prove that the subsequent diminution in Randall's Friday and Saturday overtime work was directly due to the discriminatory reduction of Randall's seniority, the Examiner did not recommend back pay for Randall for his overtime loss. The General Counsel has excepted. The Board finds merit in the General Counsel's exception in

[6] *Houston Maritime Association, Inc., et al.*, 121 NLRB No. 57.

[7] *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB No. 126-A.

[8] The Unions assert that the Trial Examiner erred in finding unlawful the Employers' contractual delegation of control over employee seniority and job priority to the Respondent Union, because, the Unions claim, the contract clauses pertaining to employee seniority and priority are subject to arbitration and, therefore, are not under the Respondent Union's exclusive control. We reject this contention because the disputed clauses appear in the ITU's incorporated General Laws, and the contract, on its face, states that the "General Laws of the International Typographical Union shall not be subject to arbitration." The arbitration provision referred to by the Unions pertains generally to clauses appearing on the face of the contract and covering wages and conditions of employment.

view of the Respondents' discrimination against Randall[9] and his subsequent loss of overtime work, and in the absence of any other reasonable explanation for Randall's loss of overtime. It may be difficult to compute Randall's back pay for the Friday and Saturday overtime he lost; however, that is no basis for failing to remedy the Respondents' unlawful discrimination against Randall. We shall, accordingly, order that the Respondent News and the Respondent Union, jointly and severally, make Randall whole for any loss of Friday and Saturday night overtime work which he has suffered since June 10, 1956, because of the Respondents' discrimination against him.

As the Trial Examiner did not find that Randall's loss of overtime work after June 10, 1956, was attributable to the Respondents' discrimination against him, we shall not hold the Respondents accountable for any back pay for overtime which Randall lost between the issuance of the Intermediate Report and this Decision and Order. The back pay shall be computed in accordance with the formula promulgated in *F. W. Woolworth Company*, 90 NLRB 289.

During the oral argument held in this proceeding, the General Counsel requested the Board to apply its *Brown-Olds'* remedy[10] and require the Respondents to reimburse

[9] In adopting the Trial Examiner's finding that the Respondents discriminatorily reduced Randall's seniority, the Board, unlike the Examiner, does not rely upon material set forth in a pre-hearing affidavit signed by Rotenberg, the mail room superintendent for the Respondent News. The record independently establishes the Respondents' discrimination against Randall, without reference to Rotenberg's affidavit. Indeed, in its consideration and resolution of the facts herein, the Board has not relied upon any material set forth in various affidavits obtained by field examiners from other witnesses who appeared and testified at the hearing in this case.

[10] The remedy derives its name from *United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry of the United States and Canada, Local 231, AFL-CIO., et al. (J. S. Brown-E. F. Olds Plumbing & Heating Corporation)*, 115 NLRB 594.

employees for the initiation fees and dues which they have paid to the Respondent Union. With regard to the General Counsel's request, the record

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shows that, by the unlawful provisions of the contract involved herein, the Respondents have unlawfully encouraged employees to join the Respondent Union in order to obtain and maintain work in the Respondent News and the Wall Street Journal mail rooms, thereby inevitably coercing those employees to pay initiation fees and dues to the Respondent Union. It would defeat the purposes and policies of the Act to permit the Respondent Union to retain the payments of those initiation fees and dues, which have been unlawfully exacted from employees. As part of the remedy, therefore, the Board will order the Respondents, jointly and severally, to refund to the employees in the Respondent News mail room, and the Respondent Union, alone, to refund to the employees in the Wall Street Journal mail room, the initiation fees, dues or any other monies illegally extracted from them. The Board believes that this remedy of reimbursement is appropriate and necessary to expunge the coercive effect of the Respondents' unfair labor practices. The Respondents' liability for reimbursement shall include the period beginning 6 months prior to the filing and service of the charges herein and shall extend to all monies thereafter collected.[11]

As recommended by the Trial Examiner, the Board will order the Respondents to cease maintaining or enforcing those provisions of the contract involved herein which have

[11] *Los Angeles-Seattle Motor Express, Incorporated, et al.*, 121 NLRB No. 205; *N. L. R. B. v. Broderick Wood Products Company, et al.*, decided November 12, 1958, 43 L. R. R. M. 2123 (C. A. 10).

been found to be violative of the Act. However, the parties hereto are hereby notified that the Board, in this proceeding and in this Decision and Order, has considered only the provisions of the disputed contract which have been placed in issue by the parties. No provisions of the disputed contract other than those alleged to be unlawful by the General Counsel have been ruled upon in this Decision and Order.[12]

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ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondent Company, News Syndicate Company, Inc., its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining or enforcing, the provisions of a written agreement with New

[12] In the course of the hearing, the General Counsel conceded that the Respondent News and the Respondent Union acted in good faith in executing the bargaining agreement involved in this proceeding. The Unions assert that the General Counsel's concession removes *actual* unlawful motivation as an element in the parties' execution of the contract. Upon that assertion, the Unions contend that the absence of such *actual* unlawful motivation precludes a finding that the Respondents, respectively, violated Sections 8 (a) (3) and 8 (b) (2) of the Act. The Board rejects the Unions' contention because violations of those Sections depend upon reference to the consequences which flow from the conduct of parties charged with violating them, not upon the parties' intent or motivation. Indeed, the Supreme Court has expressly stated, in the context of alleged violations of Sections 8 (a) (3) and 8 (b) (2), "* * * it did not matter that * * * [the respondents] * * * did not intend to discourage [union] membership since such was a foreseeable result." *The Radio Officers' Union of the Commercial Telegraphers Union, A. F. L. v. N. L. R. B.*, 347 U. S. 17, 45.

York Mailers' Union No. 6, International Typographical Union, AFL-CIO, or maintaining or enforcing any arrangement, understanding or practice with the above-named Union, under which employment in its mail room is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to said Union, except where, and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by the above-named Union that they are not obligated to comply with specified provisions of the International Typographical Union, AFL-CIO, General Laws or the said Mailers' Union's Constitution and By-Laws calling for closed shop or union preferential hiring;

(3) Encouraging membership in or support of the above-named Union, or any other labor organization of its employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted under Section 8 (a) (3) of the Act;

(4) In any like other manner interfering with, restraining or coercing its employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be

affected by an agreement permitted under Section 8 (a) (3) of the Act.

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(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Specify, in the current contract with the above-named Union, either the specific lawful provisions of the International Typographical Union, AFL-CIO, General Laws which are incorporated therein, or the specific provisions which are not incorporated because they are in conflict with the Act;

(2) Notify all mail room employees that they are not bound to follow the specific provisions of the International Typographical Union, AFL-CIO, General Laws which call for closed shop or union preferential hiring. Such notice shall be in addition to that conveyed by the posting of the notices specified in paragraph I. (b) (6) of this Order;

(3) Restore the seniority status of Burton Randall to that which he held on all nights prior to the discrimination against him on June 10 and July 22, 1956;

(4) Make whole Burton Randall for loss of earnings he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him, as provided for in "The remedy" section of the Intermediate Report as amended by "The Remedy" in this Decision and Order;

(5) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records

necessary to analyze the amount of back pay due under the terms of this Order;

(6). Post, at its place of business in New York, New York, copies of the notices hereto attached and marked "Appendix A" and "Appendix B."[13] Copies of said notices, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by authorized representatives of the respective Respondents, be posted by the Respondent Company immediately upon receipt thereof, in conspicuous places, including all places where notices to its mail room employees are customarily posted, and maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

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(7) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, as to the steps the Respondent Company has taken to comply herewith.

II. The Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining or enforcing, or causing or attempting to cause the News Syndi-

[13] In the event this Order is enforced by a decree of the United States Court of Appeals, the notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

cate Company, Inc. or the Wall Street Journal, Dow Jones & Company, Inc., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, or maintaining or enforcing any arrangement, understanding or practice with the said Companies, or any other publisher in New York City, under which employment in the mail rooms of said publishers is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to the Respondent Union, except where, and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foremen and superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by Respondent Union that they are not obligated to comply with specified provisions of the International Typographical Union, AFL-CIO, General Laws and Respondent Union's Constitution and By-Laws calling for closed shop or union preferential hiring;

(3) Causing, or attempting to cause, the above-named Companies, or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act;

(4) In any like other manner restraining or coercing employees of, or applicants for employment by, the above-named Companies, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement under Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Specify, in the current contract with the above-named Companies, either the specific lawful provisions of the International Typographical Union, AFL-CIO, General Laws which are incorporated therein, or the specific provisions which are not incorporated therein, because they are in conflict with the Act;

(2) Notify all its members that, in connection with their employment in the News mail room, in the Wall Street Journal mail room of Dow Jones, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the International Typographical Union, AFL-CIO, General Laws which call for closed shop or union preferential hiring. Such notice shall be in addition to that covered by the posting of the notices specified in paragraph II. (b) (5) and (6) of this Order;

(3) Make whole Burton Randall for loss of earnings he suffered on June 10, 1956 and thereafter, as a result of the discrimination against him, as provided for in "The remedy" section of the Intermediate Report as amended by "The Remedy" in this Decision and Order;

(4) Make whole Julius Arrigale for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him;

(5) Post, in conspicuous places in its business offices in New York, New York, copies of the notice hereto attached and marked "Appendix B."[14] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by an authorized representative of the Respondent Union, be posted by it immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted.

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Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(6) Additional copies of the notices, hereto attached as "Appendix B," shall be signed by a representative of the Respondent Union and forthwith returned to the Regional Director for the Second Region. These notices shall be posted by the News Syndicate Company, Inc. in places where notices to its mail room employees are customarily posted. These notices shall also be posted, the Wall Street Journal, Dow Jones & Company, Inc., willing, in places where notices to its mail room employees are customarily posted;

(7) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, as to the steps the Respondent Union has taken to comply herewith.

[14] See footnote 13.

III. The Respondent Company, News Syndicate Company, Inc., its officers, agents, successors and assigns and the Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors and assigns, shall, jointly and severally, reimburse the employees and former employees employed in the mail room of the Respondent Company for monies illegally exacted from them in the manner and to the extent set forth in "The Remedy" section of this Decision and Order. The Respondent Union, its officers, representatives, agents, successors and assigns shall reimburse the employees and former employees employed in the mail room of the Wall Street Journal, Dow Jones & Company, Inc., for monies

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illegally exacted from them in the manner and to the extent set forth in "The Remedy" section of this Decision and Order.

Dated, Washington, D. C., January 2, 1959.

BOYD LEEDOM, *Chairman.*
PHILIP RAY RODGERS, *Member.*
STEPHEN S. BEAN, *Member.*
JOSEPH ALTON JENKINS, *Member.*
JOHN H. FANNING, *Member.*

(Seal) NATIONAL LABOR RELATIONS BOARD.

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APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT execute, give effect to, maintain or enforce, the provisions of a written agreement with NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, nor will we maintain or enforce any arrangement, understanding or practice with the said Union, under which employment in our mail room is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to said Union, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT enforce or give effect to the provision in our agreement with the above-named Union, requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by said Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws or the above-named Union's Constitu-

tion and By-Laws calling for closed shop or union preferential hiring.

WE WILL NOT encourage membership in or support of the above-named Union, or any other labor organization of our employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

WE WILL specify, in our current agreement with the above-named Union, either the specific lawful provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which are incorporated therein, or the specific provisions which are not incorporated therein because they are in conflict with the Act.

WE WILL notify all our mail room employees that they are not bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

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WE WILL restore the seniority status of BURTON RANDALL to that which he held on all nights prior

to the discrimination practiced against him on June 10 and July 22, 1956.

WE WILL make whole BURTON RANDALL for loss of earnings which he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him, and in accordance with the Board's direction.

WE WILL refund to all our employees and former employees who have remitted initiation fees, or periodic dues or other monies illegally extracted from them to NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, the amount of such payments, and in accordance with the Board's direction.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act, as amended.

NEWS SYNDICATE COMPANY, INC.
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL MEMBERS OF NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, AND TO EMPLOYEES OF NEWS SYNDICATE COMPANY, INC., AND THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT execute, give effect to, maintain or enforce, or cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, nor will we maintain or enforce any arrangement, understanding or practice with the above-named Companies, or with any other publisher in New York City, under which employment in the mail rooms of said publishers is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to our Union, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT enforce or give effect to the provision in our agreement with the NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or with any other publisher in New York City, requiring mail room foremen or superintendents, who do the hiring, to be members of our Union, unless and until said foremen and superintendents have been directly informed by our Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws and our Constitution and By-Laws, which call for closed shop or preferential hiring.

WE WILL NOT cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, unlawfully to discriminate against mail room employees or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment by, the above-named Companies, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

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WE WILL specify, in our current agreement with the above-named Companies, either the specific lawful pro-

visions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which are incorporated therein, or the specific provisions which are not incorporated therein, because they are in conflict with the Act.

WE WILL notify all our members that, in connection with their employment in the mail rooms of the above-named Companies, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

WE WILL make whole BURTON RANDALL for loss of earnings he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him in connection with his employment in the mail room of the NEWS SYNDICATE COMPANY, INC., and in accordance with the Board's direction.

WE WILL make whole JULIUS ARRIGALE for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him in connection with his employment in the mail room of THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

WE WILL refund to all the employees or former employees employed in the mail rooms of the NEWS SYNDICATE, INC. and THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC. the initiation fees, or periodic dues or any other monies

illegally extracted from them, which they have paid to our Union, and in accordance with the Board's direction.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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Order Correcting Decision and Order.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual,
and
THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

Order Correcting Decision and Order.

On January 2, 1959, the Board issued a Decision and Order[1] in the above-entitled proceeding.

IT IS HEREBY ORDERED that the said Decision and Order be, and it hereby is, corrected by striking the word "like" from:

1. the first line in paragraph I'(a) (4) on page 8, and
2. the first line on page 11

IT IS FURTHER ORDERED that the said Decision and Order, as printed, shall appear as hereby corrected.

Dated, Washington, D. C., January 21, 1959.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

[1] 122 NLRB No. 92.

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Petition for Rehearing of Respondent News Syndicate Co. Inc.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual,
and
THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

—o—

Petition for Rehearing of Respondent News Syndicate Co. Inc.

To the Honorable Members of the
National Labor Relations Board:

Respondent News Syndicate Co. Inc. (hereinafter the "News") respectfully petitions the Board to modify further its decision and order of January 2, 1959, as amended by the order of January 21, 1959.

Respondent News requests modification of said order insofar as it requires the News to "reimburse"

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employees and former employees in the mail room of the News for monies "illegally exacted" from them (Order, ¶ III). This liability is imposed upon the News "jointly" with the Union, New York Mailers' Union No. 6 (hereinafter the "Mailers' Union"), as well as "severally". The "Remedy" section of the decision defines the monies "illegally exacted" as the initiation fees and dues paid to the respondent Union by all employees and former employees in the mail room of the News during a period of about three years. Said sum has been estimated to be in excess of Two Hundred Thousand Dollars.

The assessment of this severe penalty is justified by the decision, insofar as it affects the Mailers' Union, on the stated ground that it "would defeat the purposes and policies of the Act to permit the Respondent Union to retain the payments of those initiation fees and dues, which have been unlawfully exacted from the employees." No attempt to justify the penalty as against the News is made in the Board's decision.

It is submitted that the imposition of this severe penalty against the News cannot be justified under the circumstances of this case, for the following reasons:

(1) The News had no part in the collection of said fees and dues. There is no check-off of dues by the News—dues and initiation fees are paid by members of the Union directly to the Mailers' Union and the Union retains such payments. Thus, the News has not "illegally extracted" any monies from members of the Union.

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(2) The News had no notice that this remedy was sought or would be applied. Neither the charge nor the complaint alleged any illegal coercion of employees to become members of the Union. More importantly, the Trial Examiner did not recommend application of this remedy and the General Counsel did not request it in the form of an exception to the Intermediate Report, or otherwise. To impose the remedy against the News in these circumstances is a denial of due process of law.

(3) The imposition of this remedy has unjustly placed the News in a very difficult and unpleasant position, for the following reasons:

(a) The provisions in the contract now found to be illegal by the Board were not illegal when originally enacted (prior to passage of the Taft-Hartley Act). The News, through its bargaining representative, the Publishers' Association of New York City, has earnestly striven to eliminate or curtail the incorporation of ITU General Laws into the contracts and to obtain greater control by the employers over their foremen. The News should not be penalized because it was not entirely successful in these endeavors.

(b) The News did not join with the Mailers' Union and the ITU in the proceedings before the Board because it did not want to argue for the legality of provisions in the contract which the Publishers did not want in their contract, whether legal or not. Unless the Board modifies its order by eliminating this severe penalty imposed upon the News, the News may be forced in the Court of Appeals on review or in enforcement proceedings to argue for the legality of provisions that it does not want, in order to avoid the severe penalty.

(c) The News filed no exceptions to the Intermediate Report on the understanding, derived from Section 101.12(b)

of the Statements of Procedure of the Board, that if no exceptions were filed the Board would, at most, adopt the report and recommendations of the Trial Examiner. The News did not expect that the Board would go beyond its declared power to "adopt, modify or reject the findings and recommendations of the Trial Examiner" by enlarging upon the Trial Examiner's recommendations and by imposing a remedy not suggested by the Trial Examiner or requested by the General Counsel.

(d) The practices found to be discriminatory in this case do not warrant the imposition of the severe penalty ordered by the Board, particularly with respect to the employer, who was not an active wrongdoer and did not profit from the acts or practices found to be discriminatory.

Because the News had no notice that the Brown-Olds remedy would be recommended to the Board, the record in this case may not contain all of the facts relevant to the grounds stated above in support of the News' contention here that this remedy is inappropriate and unjust. Therefore, if the Board does not rescind its order insofar as it imposes this remedy upon the News, it should at least order a further hearing so that the News can adduce evidence in support of its position.

This petition for rehearing is limited to the remedy provision of the order. However, the News does not hereby waive any of its rights to seek review or otherwise question the correctness of other determinations in said decision and order in any subsequent proceeding in the United States Court of Appeals.

The Contract

The News has been a party signatory to collective bargaining agreements with the Mailers' Union along with other newspaper publishers in the City of New York for many decades. The contracts in question in this case were those in effect (1) between December

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8, 1954 and December 7, 1956 (Gen. Counsel Ex. 2); and (2) between December 8, 1956 and December 7, 1958 (Gen. Counsel Ex. 3). These contracts were negotiated through a joint-employer bargaining unit and all of the publishers were bound by the same single contract. To the extent that there are provisions in the contracts, which the General Counsel and the Board believe are illegal, no culpability for their inclusion should attach to the News or any other

publisher signatory to the contract. Indeed, as is noted in footnote 12 of the Board's decision, the General Counsel conceded that the News acted in good faith in executing the collective bargaining agreement.

The General Laws of the ITU (Gen. Counsel Ex. 4)* prohibit a local union from signing a contract with an employer unless such contract is in accordance with the International law and policy and is approved by the International President. (General Laws ITU, 1957, Article III, § 2, Gen. Counsel Ex. 4). The Mailers' Union represents substantially all** of the employees in the mail rooms of all of the publishers, including the News, in the multi-employer bargaining unit. The employers are obligated to bargain with the Mailers' Union as the representative of their employees.

The publishers have not been able to negotiate a contract with this Union, which represents substantially all of their employees, unless the contract incorporates by reference the General Laws of

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the ITU and provides, among other things, that the foreman shall be a member of the Union. The publishers would like to delete all reference to ITU General Laws from their contracts and provide for greater control of their foremen, but to date they have been successful only to the extent of limiting the incorporation of the ITU General Laws to those not in conflict with the contract or with federal or state

* Footnote 5 of the Intermediate Report suggests that all references are to the 1957 Book of Laws. We note that the 1959 Laws have been substantially modified by the ITU.

** All employees want to join the Union and invariably do so whenever they become eligible for membership.

law (Gen. Counsel Exs. 2, 3—§ 24) and in limiting the right of the Union to discipline foremen for carrying out orders of the publisher (Gen. Counsel Exs. 2, 3—§ 20[c]). Certainly, an employer should not be obliged to suffer the consequences of a disastrous strike in order to attempt to win a point with a powerful union, particularly where the contract provisions now said to be unlawful had not been found illegal before.

The publishers have never consented to the inclusion of a provision or the incorporation of a General Law in any contract with the Mailers' Union which, at the time the contract was executed, had been found to be illegal by any final order of the Board or any court.

The Hiring Procedure

Because of the variations in size of the newspaper from day to day and because on certain days towards the end of the week more men are needed to handle portions of the Sunday paper, the work force in the mail room of the News must vary from day to day. The nucleus of the labor force are the "regular situation holders", the employees who are guaranteed five shifts of work per week. A second class of employees called "regular substitutes" exists to fill in for

regular situation holders. A regular substitute, while not guaranteed five shifts' work per week, is usually able to work that often. He should be available for work throughout the week. Such availability indicates that he has selected this industry as his chief means of livelihood.

The third category of workers are the "extras", who are hired to fill the needs of the publisher on particularly

heavy nights, usually Fridays and Saturdays. Extras are not really employees, except during the shift for which they are hired—because they shape for work only when it suits their own whim or convenience. They do not have the obligations or responsibilities of a regular employee who must report for work as scheduled by his employer. Extras who shape at the News mail room include non-union men with regular jobs in other industries, firemen, students, and even lawyers. Regular situation holders and regular substitutes at other newspapers and men who would like to obtain full time work in the industry also shape for work as extras at the News.

The Discrimination Against Randall.

Randall is a full time employee in another industry. (He is production manager of the Wouka Distributing Corp., an importer of fish.) He shaped for extra work in the News mail room almost exclusively on Friday and Saturday nights. The News had no advance assurance that Randall would appear on any given night to seek work. Randall had a high position on foreman Rottenberg's unofficial extra list and was usually hired whenever he shaped on the heavy nights—Friday and Saturday.

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The discrimination against Randall found by the Trial Examiner resulted from the following facts:

(1) In the Spring of 1956, the Mailers' Union proposed to the News that the News establish additional regular substitute positions.

(2) The News agreed to advance those extras who had worked an average of close to three shifts per

week over the past two years (*i.e.*, those who had earned at least 15 vacation credits over that period).

(3) Thirty-one non-Union extras qualified under this formula, but Randall did not.

(4) All 31 indicated that they wanted cards in the Mailers' Union (as did Randall) and since they were given regular substitute status, they qualified for Union membership.

(5) On or about June 10, 1956, those who qualified were accepted into the Union.

(6) As regular substitutes, these 31 former non-Union extras went to work ahead of Randall, who did not qualify for advancement, because he did not (and could not because of his regular full time job) work often enough to qualify as a regular substitute.

Despite the advancement of these 31 former non-Union extras, Randall continued to receive employment when he shaped on Friday and Saturday evenings (Int. Rept., p. 19, line 35). Randall claimed, however (and the Trial Examiner found), that he was sometimes hired at a later starting hour, thus finished work at a later hour; that he received more difficult and tedious work and that there was a real possibility that he would not be hired at all. This was the extent of Randall's claim of discrimination when he filed his charge on June 25, 1956.*

* The Brown-Olds remedy is imposed for a period beginning six months prior to the filing of the charges, even though the discrimination against Randall is not claimed in the charge to have existed earlier than June 15, 1956 (Gen. Counsel Ex. 1 H).

Although he could not recall ever having shaped on a Sunday before (a relatively light night), Randall did shape for work on Sunday, July 15, 1956, and was hired by an assistant foreman (foreman Rottenberg was not on duty that night). The next Sunday, July 22, 1956, Randall again shaped but was not hired. The Trial Examiner found that Randall was not hired because of instructions given by Mailers' Union President Smollen to foreman Rottenberg. In making such finding he rejected the testimony of both Rottenberg and Smollen as to the content of their conversation concerning the incident and credited instead Randall's hearsay version. If Rottenberg did refuse to hire Randall that Sunday night because of instructions from Mailers' Union President Smollen, he was wrong and such action was neither authorized nor condoned by the News management.

It is one thing to require the News to make Randall whole for loss of earnings incurred on July 22, 1956, because its representative, the foreman, acted improperly and under instructions from the Union instead of from management. However, it is quite a different thing to punish the News to the extent that it has been punished here, under these circumstances. We trust that the Board will agree upon reflection that the imposition of the Brown-Olds remedy against the News in this case is not warranted, appropriate or just.

Petition for Rehearing of Respondent News Syndicate Co. Inc.

I—The News Should Not Be Required to "Reimburse" Monies It Has Not Received or Retained

In *Brown-Olds*, 115 NLRB No. 90, 37 LRRM 1360 (1956), only the union was required to reimburse initiation fees and dues. The theory of the remedy, as stated by the board in that case, was that dues and assessments

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collected by the union constituted the price the employees paid in order to retain their jobs and that "the very fruits of the unfair labor practice" should not remain in the hands of the union.

This reasoning does not justify an order directed to an employer who did not receive or retain any of the dues and who did not profit by their collection.

The Board in *Brown-Olds* relied upon the holding in *Virginia Elec. & P. Co. v. NLRB*, 319 U. S. 533 (1943), that the board has power to order reimbursement of dues checked off by an employer and paid over to a company dominated union. The rationale of the Court was that an order "which deprives an employer of advantages accruing from a particular method of subverting the Act, is a permissible method of effectuating the statutory policy" (319 U. S. at 541).

This decision does not justify an order directed to an employer who neither sought nor obtained any advantage from the alleged violations of the Act.

In *Broderick Wood Products Co.*, 118 NLRB No. 8, 40 LRRM 1117, aff'd F. 2d , 43 LRRM 2123 (C. A. 10th 1958), the employer found guilty of the unfair labor practice took an active part in forcing its employees

to join the respondent union and pay dues to it. The employer also checked off initiation fees in violation of the Act.

No such active participation by the News exists in this case.

Thus, there is no basis on the facts of the case for ordering the News to "reimburse" monies "illegally extracted", because the News did not take any

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dues from any employee or require any employee to pay dues to the Union.

II—The Failure To Give Notice To The News That This Remedy Would Be Applied Deprives The News Of Due Process Of Law

The first suggestion that the Brown-Olds remedy be applied was made by a member of the Board during the oral argument (Tr. of Oral Arg., p. 38). The News was not present at the oral argument and had no advance notice that this remedy would be suggested. Incidentally, the Assistant General Counsel who argued the case before the Board and responded to the suggestion that this remedy be applied, was not the attorney who tried the case or prepared the exceptions and brief for the General Counsel. He undoubtedly did not have the familiarity with the record or the parties possessed by the Trial Counsel or the Trial Examiner, neither of whom asked for imposition of the Brown-Olds remedy. In any event, his recommendation was not unequivocal and did not include any suggestion that the remedy should be applied to the employer. He said:

"The General Counsel does recommend Brown-Olds, wherever proper." (Tr. of Oral Arg., pp. 39-40.)

As we have already noted, in Brown-Olds only the Union was ordered to reimburse the dues and fees it had collected. Here, we submit that subjecting the employer to this remedy is not only improper as a means of effectuating the policies of the Act, but in addition, has deprived the employer of due process of law.

The charge (Gen. Counsel Ex. 1 H) speaks only of a discrimination against Burton Randall commencing on June 15, 1956 because of his non-membership in the Mailers' Union. The Amended Complaint (Gen.

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Counsel Ex. 1 L) also deals exclusively with the charge that Randall was discriminated against since on or about June 15, 1956. The complaint does not allege that the News coerced its employees into paying initiation fees or dues to the Mailers' Union and the General Counsel did not try the case on any such theory. The Trial Examiner made no finding that employees in the News mail rooom were coerced by the News into joining the Mailers' Union or paying dues to it and he did not recommend the Brown-Olds remedy. Although the General Counsel did file exceptions to the Trial Examiner's Intermediate Report, no exception to the failure of the Trial Examiner to recommend this remedy was included.

The News had no opportunity to be heard or to present evidence with respect to whether it "coerced" any of its employees to join or to pay dues to the Mailers' Union.

There is nothing in the record of this case to support this basic premise upon which the imposition of the Brown-Olds remedy has been based. Until there has been a full opportunity to litigate this issue and a finding with respect to coercion of employees, this drastic remedy should not be applied.

Due process of law and basic concepts of fair play dictate that sufficient notice and an opportunity to be heard be given before any penalty is imposed or rights impaired (see, *e.g., Gonzales v. United States*, 348 U. S. 407, 412 [1954]).

The Board's own Rules and Regulations provide that matter not included in the exceptions *may not* thereafter be urged before the Board (Rule 102.46 [b]). Due process of law also requires that an administrative agency follow and apply its own published rules and regulations (*Service v. Dulles*, 354 U. S. 363,

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369 [1957]; *U. S. ex rel., Accardi v. Shaughnessy*, 347 U. S. 260 [1954]; *Madden v. Masters, Mates & Pilots*, F. 2d , 42 LRRM 2792 [7th Cir. 1958]).

But for the question put by a member of the Board at the oral argument, the General Counsel would not have recommended this remedy at all. Had the News been present at the oral argument, it would have been able to urge the equities in favor of exempting the News from this remedy.

The News believes that the considerations which influenced the Board to withhold application of this remedy in *Philadelphia Woodwork Co.*, 121 NLRB No. 201, 43 LRRM

1031 (1958), and *Local 392, Plumbers and Pipefitters Union*, 122 NLRB No. 61, 43 LRRM 1115 (1958), are equally present here at least insofar as the employer is concerned. There are also additional considerations in this case which cry out against the imposition of this severe penalty against the employer. We trust that when the Board has had an opportunity to hear and consider the position of the News, it will agree that this drastic remedy is not appropriate with respect to the News.

III—The Imposition Of This Remedy Against The News Is Not Warranted By The Facts In This Case And Will Defeat, Rather Than Further The Purposes And Policies Of The Act

The provisions of the contract and those incorporated into the contract from the ITU General Laws, which the Board now declares to be "unlawful as written", are provisions that the Mailers' Union and the ITU have insisted be retained in the contract. The Publishers do not want such provisions in their contracts, but they have not been able to negotiate them out of the contract.

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The Trial Examiner in his Report quoted from a speech by Woodruff Randolph, then President of the ITU, that referred to the "nation-wide struggle with employers to maintain our general laws as a basis of union shop operations" (Int. Rept., p. 6, line 10). The Board is also undoubtedly familiar with the early history of this struggle as detailed in the decision of the Seventh Circuit in *American Newspaper Publishers Assn. v. National Labor Relations Board*, 193 F. 2d 782 (1951), cert. den. in part 344

U. S. 812 (1952), and with the statement of Judge Swygert in *Evans v. International Typographical Union*, 81 F. Supp. 675, 687 (S. D. Ind. 1948), that:

> "* * * it has not been shown by clear and convincing evidence that the New York City publishers' contract is in violation of any terms of the decree * * *."

We refer to these cases so that the Board can consider and appreciate the position of the publishers who must bargain with locals of the ITU. Conditions that developed gradually and have existed for many decades are difficult to uproot all at once, especially where there has been no consistent, authoritative answer from the Board or the Courts clearly defining what is legal and what is proscribed with respect to these conditions. Fairness requires that the employer be given the opportunity to remove such provisions from its contract before it is penalized to the extent ordered here.

The responsibility for the provisions now found unlawful rests largely, if not solely, with the Union. The employer should not, therefore, bear the heavier burden of punishment. Yet the Board's order punishes the News far more severely than it does the Union.

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Since the liability imposed here is "several", as well as "joint", the News could be required to pay the entire amount of the dues in the first instance. There is no assurance that it could then obtain contribution for half from the Mailers' Union. But even assuming that the News is ultimately required to pay only one-half the amount jointly with the Union, the Union will have paid

back only half of the dues it has collected and will be able to retain the other half. The News, which never collected or retained any dues, will be deprived of the sum that the Union is allowed to keep. Thus, on the estimated figures, the Union will profit by the retention of more than $100,000 in dues, while the News will be out more than $100,000.

Further, the order requires that the dues and fees be reimbursed to all members of the Union on the theory that the members were compelled to join the Union* and that the Union should not be permitted to retain monies illegally obtained. Not only is the Union permitted to retain one-half of such monies, but its members will be permitted to retain the full amount of the dues as well as the benefits they derived from the contract provisions. The Union does not exist apart from its membership under New York Law (Unincorporated Associations Law, §§ 12, 13). Therefore, benefits retained by the members are benefits retained by the Union.

If the Union does not have sufficient funds in its treasury to pay its share of this penalty, it would have to assess its members to pay this debt to its members. For the Union to return dues to its

members is much like taking money from one pocket and putting it in another. A special assessment on the membership could put the dues right back in the original pocket. But any money paid over to Union members by the News is completely out of pocket to the News.

* This does not take into account the fact that most of these employees were members of the Union prior to the Taft-Hartley Act and were not illegally coerced into membership.

If anyone profited by the provisions and practices found to be unlawful, it was the members of the Union. They are the employees that the Board believes were favored in job security and who derived other benefits from the contract. Now they are to be further favored by reimbursement of the dues and fees paid to their bargaining representative which had secured these benefits for them.

Moreover, the discrimination against Randall found by the Trial Examiner involved no culpability on the part of the News. The News had never understood that the contract required regular situation holders or regular substitutes in the mail room to be members of the Union. The News would have strenuously resisted any such interpretation as now made by the Board if it had ever been suggested by the Union. The contract does not contain the usual Union security clause requiring membership in the Union 30 days after employment. Indeed, many non-Union persons are employed in the News mail room, including Mr. Randall.

When the News promoted the 31 non-Union extras to regular substitute status, it did so unconditionally because these men had met the established standard as to consistency and continuity of availability for work. Had any of these men elected not to join the Union, the News would not have taken away their newly acquired status as regular substitutes. Indeed, if any regular situation holder or regular

substitute decides that he does not want to remain a member of the Mailers' Union, he has a perfect right to do so and he will not lose his job. The fact that the Union has

achieved 100% membership of certain classes of employees does not establish discrimination. This is not a case where a qualified job holder was denied an employment because he was not a member of the Union.

The "discrimination" against Randall was not based on his non-membership in the Union, but rather was based upon the fact that he did not establish sufficient avaliability for work under the prescribed formula. Randall was not the only non-Union man who did not qualify. There were many other casuals who do not report for work often enough to be considered as available for regular substitute or regular situation holder status.

As an extra, Randall had no vested rights. He had no obligation to report for work on any night of the week. The contract does not provide for any priority or seniority formula for hiring of extras. It is true that the foreman at the News (Rottenberg) for his own personal guidance kept a list on which he arranged the names of extras on the basis of the date when they first appeared for work, but which did not reflect the consistency or continuity of their shaping for work. The News believed that it was free to hire extras in any order or sequence, so long as it did not encourage or discourage membership or non-membership in any union. It has always attempted to be fair in selecting extras to fill its needs. It believes that it was fair to Randall.

The News does not agree with the finding that it did discriminate against Randall because of his

non-membership in the Union. While it was willing to accept the decision of the Trial Examiner on that issue

(which willingness was indicated by not filing exceptions to the Intermediate Report), the News does not believe that it ought to be punished by reason of a discrimination that is at best a technical and nonculpable one.

CONCLUSION

The Union recognizes that the News had no culpability in this case and does not want to be bound by the contract provisions found unlawful by the Board. In a reply brief submitted to the United States Court of Appeals for the Second Circuit in support of its motion to dismiss the petition for enforcement, the Union argued:

> "Furthermore, if the petition of NEWS SYNDICATE COMPANY, INC. for rehearing is acted on favorably, the only issue in which they are interested, and indeed which they still have standing to raise, would be out of the case, and NEWS SYNDICATE COMPANY, INC. would comply."

If the Union ultimately fails to sustain its contention that such provisions are not illegal, the News and other publishers will then be able to remove these undesirable provisions from their contract. However, if the Union succeeds, upon review or in enforcement proceedings, in convincing a Court of Appeals that such provisions are not violative of the Act, the publishers' struggle to remove these provisions from the contract will continue, but with probably the same lack of success as heretofore.

The Board can help the News and other publishers in their struggle to eliminate these provisions from their contracts by lifting the severe penalty imposed upon the employer in this case. We submit that withholding the

Brown-Olds remedy as to the employer will best serve to effectuate the purposes and policies of the Act, and we trust that the Board will

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agree, upon reconsideration, that imposition of this remedy against the employer in this case was inappropriate.

Respectfully submitted,

ANDREW L. HUGHES,
TOWNLEY, UPDIKE, CARTER & RODGERS,
Attorneys for Respondent,
News Syndicate Co., Inc.

Dated: New York, N. Y.,
February 5, 1959.

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CERTIFICATE OF SERVICE.

NEWS SYNDICATE COMPANY, INC.,
and
NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondents.

The undersigned certifies that he served the within PETITION FOR REHEARING OF RESPONDENT NEWS SYNDICATE CO. INC., by mailing the stated number of copies, on the following:

Seven copies to the National Labor Relations Board, 330 C Street, S. W., Washington 25, D. C.

One copy to Sidney Sugarman, Esq., 295 Madison Avenue, New York 17, N. Y.

One Copy to Messrs. Van Arkel and Kaiser, Suite 601, 1701 K Street, N. W., Washington 6, D. C.

One copy to the National Labor Relations Board, Second Region, Two Park Avenue, New York 16, N. Y.

One copy to Thomas J. McDermott, Esq., Associate General Counsel, National Labor Relations Board, 330 C Street, S. W., Washington 25, D. C.

Said petition was mailed to the above parties on the 5th day of February, 1959.

ANDREW L. HUGHES,
TOWNLEY, UPDIKE, CARTER & RODGERS,
Attorneys for Respondent,
News Syndicate Co. Inc.

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Order Denying Motions and Clarifying Order.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

—o—

NEWS SYNDICATE COMPANY, INC.,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CA-4967.

—o—

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
BURTON RANDALL, an Individual,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party to the Contract.

Case No. 2-CB-1769.

—o—

and
NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
and
JULIUS ARRIGALE, an Individual,
and
THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., Publisher,
Party to the Contract,
and
PUBLISHERS' ASSOCIATION OF NEW YORK CITY,
Party in Interest.

Case No. 2-CB-1807.

—o—

On January 2, 1959, the Board issued a Decision and Order[1] in the above-entitled consolidated proceeding, and on January 21, 1959, the Board issued an Order Correcting Decision and Order in the said proceeding.

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Thereafter, on January 15, 1959, the Respondent New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, filed with the Board a Petition for Rehearing with respect to matters involved in the Decision and Order, and on January 30, 1959, filed a Petition for Rehearing on the January 21, 1959 Order Correcting Decision and Order. On February 6, 1959, the Respondent News Syndicate, Inc., filed a Motion for Rehearing on the Board's Decision and Order as corrected. The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above described motions be, and they hereby are, denied as lacking in merit; and

IT IS FURTHER ORDERED that the Decision and Order herein be, and it hereby is, amended, by:

1. Deleting therefrom paragraph I (b) (1) of the Order in its entirety, and substituting therefor the following:

(1) Specify, in the current contract with the above-named Union that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative.

[1] 122 NLRB No. 92.

2. Deleting therefrom paragraph II (b) (1) of the Order in its entirety, and substituting therefor the following:

(1) Specify, in the current contract with the above-named Companies that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative.

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IT IS FURTHER ORDERED that the corresponding paragraphs of the Notices attached to the Decision and Order herein, and marked Appendix A and Appendix B, respectively, be, and they hereby are, amended to conform to paragraphs I (b) (1) and II (b) (1) of the Decision and Order as amended. Amended copies of the said Notices, marked Appendix A and Appendix B respectively, are attached hereto.

Dated, Washington, D. C., March 2, 1959.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

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APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT execute, give effect to, maintain or enforce, the provisions of a written agreement with NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, nor will we maintain or enforce any arrangement, understanding or practice with the said Union, under which employment in our mail room is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to said Union, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT enforce or give effect to the provisions in our agreement with the above-named Union, requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by said Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws or the above-named Union's Constitu-

tion and By-Laws calling for closed shop or union preferential hiring.

WE WILL NOT encourage membership in or support of the above-named Union, or any other labor organization of our employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

WE WILL specify, in our current agreement with the above-named Union, that the provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO General Laws which have been found by the National Labor Relations Board to be illegal, are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein and currently operative.

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WE WILL notify all our mail room employees that they are not bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

WE WILL restore the seniority status of BURTON RANDALL to that which he held on all nights prior

to the discrimination practiced against him on June 10 and July 22, 1956.

WE WILL make whole BURTON RANDALL for loss of earnings which he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him, and in accordance with the Board's direction.

WE WILL refund to all our employees and former employees who have remitted initiation fees, or periodic dues or other monies illegally extracted from them to NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, the amount of such payments, and in accordance with the Board's direction.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act, as amended.

NEWS SYNDICATE COMPANY, INC.
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B attached to Order.

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APPENDIX B

NOTICE TO ALL MEMBERS OF NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, AND TO EMPLOYEES OF NEWS SYNDICATE COMPANY, INC., AND THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT execute, give effect to, maintain or enforce, or cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, nor will we maintain or enforce any arrangement, understanding or practice with the above named Companies, or with any other publisher in New York City, under which employment in the mail rooms of said publishers is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to our Union, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT enforce or give effect to the provisions in our agreement with the NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or with any other publisher in New York City, requiring mail room foremen or superintendents, who do the hiring, to be members of our Union, unless and until said foremen and superintendents have been directly informed by our Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws and our Constitution and By-Laws, which call for closed shop or preferential hiring.

WE WILL NOT cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment by, the above-named Companies, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

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WE WILL specify, in our current agreement with the above-named companies, that the provisions of the

Appendix B attached to Order.

INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which have been found by the National Labor Relations Board to be illegal, are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein and currently operative.

WE WILL notify all our members that, in connection with their employment in the mail rooms of the above-named Companies, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

WE WILL make whole BURTON RANDALL for loss of earnings he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him in connection with his employment in the mail room of the NEWS SYNDICATE COMPANY, INC., and in accordance with the Board's direction.

WE WILL make whole JULIUS ARRIGALE for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him in connection with his employment in the mail room of THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

WE WILL refund to all the employees or former employees employed in the mail rooms of the NEWS SYNDICATE COMPANY, INC. and THE WALL STREET JOURNAL, DOW JONES & COMPANY,

INC., the initiation fees, or periodic dues or any other monies illegally extracted from them, which they have paid to our union, and in accordance with the Board's direction.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL--CIO.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from date hereof, and must not be altered, defaced, or covered by any other material.

Answer of Respondent New York Mailers' Union No. 6, International Typographical Union (AFL-CIO).

2-CA-4967

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

———o———

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

against

NEWS SYNDICATE COMPANY, INC.,
and
NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondents.

———

Docket No. 25496.

———o———

Now comes New York Mailers' Union No. 6 (ITU) (AFL-CIO), one of the respondents in this proceeding to enforce an Order of the National Labor Relations Board, and for its Answer states as follows:

A. The provisions of the Order predicated on the alleged discrimination against Randall should be denied enforcement for the following reasons:

1. The finding that the Union caused *The News* to discriminate against Randall with regard to hire and tenure of employment within the meaning of Sec. 8 (b) (2) of the

Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10 (e) of the Act.

2. The finding that in relation to the discharge of Randall the Union restrained and coerced employees within the meaning of Sec. 8 (b) (1) (A) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10 (e) of the Act.

3. The conclusions that, with respect to the discharge of Randall, the Union violated Sec. 8 (b) (1) (A) and Sec. 8 (b) (2) are erroneous as a matter of law.

B. The provisions of the Order predicated on the alleged discrimination against Arrigale should be denied enforcement for the following reasons:

1. The finding that the Union caused *The Journal* to discriminate against Arrigale with regard to hire and tenure of employment within the meaning of Sec. 8 (b) (2) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10 (e) of the Act.

2. The finding that in relation to the discharge of Arrigale the Union restrained and coerced employees within the meaning of Sec. 8 (b) (1) (A) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10 (e) of the Act.

3. The conclusions that, with respect to the discharge of Arrigale, the Union violated Sec. 8 (b) (1) (A) and Sec. 8 (b) (2) are erroneous as a matter of law.

C. The provisions of the Order predicated on the agreements between the Union and *The News*, *The Journal*, and

other publishers in New York City should be denied enforcement for the following reasons:

1. The finding that by executing, maintaining, and enforcing the aforesaid agreements the Union violated Sec. 8 (b) (1) (A) and Sec. 8 (b) (2) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10 (e) of the Act.

2. The conclusions that the execution, maintenance, and enforcement of the aforesaid agreements are illegal in whole or in part under Sec. 8 (b) (1) (A) and Sec. 8 (b) (2) of the Act are erroneous as a matter of law.

3. In making the foregoing findings and conclusions the Board indulged in presumptions beyond the Board's power, inconsistent with the Act and contrary to the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

4. In so far as the Board's findings and conclusions are based on the laws, constitution, or other membership rules of International Typographical Union (AFL-CIO) or of respondent New York Mailers' Union No. 6, they are contrary to the proviso to Sec. 8 (b) (1) (A) of the Act.

5. The Complaint failed to state, and the Board failed to find, whether respondent Union "caused" or "attempted to cause" the respective employers to violate Sec. 8 (a) (3) of the Act by executing, maintaining, and enforcing the aforesaid agreements. Accordingly:

a. The Complaint did not adequately allege, and the Board failed properly to find, that respondent Union had violated Sec. 8 (b) (2) by any such acts.

b. Respondent Union was denied its rights under Sec. 102.15 of the Board's Rules and Regulations, Sec. 101.8 and Sec. 101.12 of the Board's Statements of Procedure, Sec. 10 (b) and Sec. 10 (c) of the Act, Sec. 5 of the Administrative Procedure Act, and under the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

D. The individual parts and provisions of the Order should be denied enforcement for the foregoing reasons and for other reasons as specified by paragraphs below:

Par. II (a) (1): This provision is beyond the powers of the Board under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (a) (2): This provision is beyond the Board's powers under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the Act, is expressly forbidden by the proviso to Sec. 8 (b) (1) (A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (a) (3): This provision is beyond the powers of the Board under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (a) (4): This provision is beyond the powers of the Board under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the

Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, because of the change made by the Order of January 21, 1959, is beyond the Board's power under Sec. 10 (d) of the Act.

Par. II (b) (1): This provision is beyond the Board's powers under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10 (d) of the Act.

Par. II (b) (2): This provision is beyond the Board's powers under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (e) of the Act, is expressly forbidden by the proviso to Sec. 8 (b) (1) (A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (b) (3): This provision for back pay to Randall is beyond the powers of the Board under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on inadequate findings unsupported by substantial evidence on the record considered as a whole under Sec. 10 (e) of the Act and Sec. 10 of the Administrative Procedure Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (b) (4): This provision for back pay to Arrigale is beyond the powers of the Board under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on inadequate findings

unsupported by substantial evidence on the record considered as a whole under Sec. 10 (e) of the Act and Sec. 10 of the Administrative Procedure Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II (b) (5): This provision, by requiring respondent Union to post notices to the effect that the other portions of the Order have been complied with, is illegal for the same reason as is the Order to which it refers, as set out herein; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10 (d) of the Act.

Par. II (b) (6): This provision, by requiring respondent Union to post notices that it will not perform certain acts, is beyond the Board's powers under Sec. 10 (a) and Sec. 10 (c) of the Act, is based on findings inadequate under Sec. 10 (a) of the Act, is expressly forbidden by the proviso to Sec. 8 (b) (1) (A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10 (d) of the Act.

Par. III: This provision of the Order is beyond the Board's powers under Sec. 10 (a) and Sec. 10 (c) of the Act, and is based on findings inadequate under Sec. 10 (c) of the Act; further, the Complaint did not allege the existence of facts on which this provision of the Order is predicated; the Trial Examiner did not recommend that this provision or any such purported remedy be included in the Order; and the General Counsel did not except to

such failure to recommend. Respondent Union thereby was denied its rights under Sec. 102.15 and Sec. 102.46 of the Board's Rules and Regulations, Sec. 101.8 and Sec. 101.12 of the Board's Statements of Procedure, Sec. 10 (b) of the Act, Sec. 5 and Sec. 8 of the Administrative Procedure Act, and under the Due Process Clause of the Fifth Amendment to the United States Constitution.

WHEREFORE, respondent Union prays that the petition for enforcement of the Order be in whole denied, that the Order be set aside in its entirety, and that the Court give such other and further relief to respondent Union as may be appropriate.

Dated: New York, N. Y., March 19, 1959.

SIDNEY SUGARMAN,
Attorney for Respondent New York Mailers' Union No. 6, International Typographical Union, AFL-CIO.
Address: 295 Madison Avenue,
New York 17, N. Y.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

—o—

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

against

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondents.

—o—

CERTIFICATE OF SERVICE WITH STIPULATION.

The undersigned certifies that one copy of the Answer of respondent New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, to the Board's petition for enforcement of its Order in the above case was this day, within the time specified in the attached Stipulation dated February 9, 1959, duly served by first class mail upon the following counsel at the addresses listed below:

Messrs. Townley, Updike, Carter & Rodgers,
Att: J. Howard Carter, Andrew L. Hughes and Conrad J. Bain, Esquires,
220 East 42nd Street,
New York 17, New York.

Thomas J. McDermott, Associate General Counsel,
National Labor Relations Board,
Washington 25, D. C.

Dated: New York, N. Y., March 19, 1959.

SIDNEY SUGARMAN,
Attorney for Respondent Union New York Mailers' Union No. 6, International Typographical Union, AFL-CIO,
Address: 295 Madison Avenue,
New York 17, N. Y.

Amended Petition of the National Labor Relations Board for Enforcement of its Order With Modifications.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

NEWS SYNDICATE COMPANY, INC.,

and

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, RESPONDENTS.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*, as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order, with the modifications set forth below in paragraphs (6) and (7), against Respondent Company, News Syndicate Company, Inc., its officers, agents, successors, and assigns and Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors, and assigns. A copy of the Order, as amended, is attached hereto.

In support of this petition the Board shows as follows:

(1) On or about January 16, 1959, the Board filed with this Court a petition to enforce its original order of January 2, 1959.

(2) On January 15, 1959, the Respondent New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, filed with the Board a Petition for Rehearing with respect to matters involved in the Decision and Order.

(3) On January 21, 1959, the Board issued an Order Correcting Decision and Order by striking the word "like" from the first line in paragraph I (a) (4) on page 8 and the first line on page 11.

(4) On January 30, 1959, Respondent New York Mailers' Union No. 6 filed Petition for Rehearing on the Order Correcting Decision and Order.

(5) On February 6, 1959, the Respondent News Syndicate, Inc., filed Motion for Rehearing on the Board's Decision and Order as corrected.

(6) The Board having duly considered the matter, on March 2, 1959, issued an Order Denying Motions and Clarifying Order. The Board therein amended its Order of January 2, 1959, by

1. Deleting therefrom paragraph I (b) (1) of the Order in its entirety, and substituting therefor the following:

"(1) Specify, in the current contract with the above-named Union that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative."

2. Deleting therefrom paragraph II (b) (1) of the Order in its entirety, and substituting therefor the following:

"(1) Specify, in the current contract with the above-named Companies that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative."

3. By amending the corresponding paragraphs of the Notices attached to the Decision and Order, Appendix A and Appendix B, respectively to conform to paragraphs I (b) (1) and II (b) (1) of the Decision and Order as amended.

(7) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 13 (g) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order as amended was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, petitions for rehearing, order denying motions and clarifying order, and the amended Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this amended petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the

pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon as modified in paragraph (6) and (7) hereof, a decree enforcing said order of the Board, with the modifications recommended herein, and requiring Respondent Company, its officers, agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns to comply therewith.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel.
National Labor Relations Board.

Dated at Washington, D. C., this 23rd day of March, 1959.

ORDER.

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondent Company, News Syndicate Company, Inc., its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining or enforcing, the provisions of a written agreement with New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, or maintaining or enforcing any arrangement, understanding or practice with the above-named Union, under which employment in its mail room is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship

training, or competency testing systems is delegated to said Union, except where, and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by the above-named Union that they are not obliged to comply with specified provisions of the International Typographical Union, AFL-CIO, General Laws or the said Mailers' Union's Constitution and By-Laws calling for closed shop or union preferential hiring;

(3) Encouraging membership in or support of the above-named Union, or any other labor organization of its employees, by discriminating against employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted under Section 8 (a) (3) of the Act;

(4) In any other manner interfering with, restraining or coercing its employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Specify, in the current contract with the above-named Union that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found

illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative.

(2) Notify all mail room employees that they are not bound to follow the specific provisions of the International Typographical Union, AFL-CIO, General Laws which call for closed shop or union preferential hiring. Such notice shall be in addition to that conveyed by the posting of the notices specified in paragraph I. (b) (6) of this Order;

(3) Restore the seniority status of Burton Randall to that which he held on all nights prior to the discrimination against him on June 10 and July 22, 1956;

(4) Make whole Burton Randall for loss of earnings he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him, as provided for in "The remedy" section of the Intermediate Report as amended by "The Remedy" in this Decision and Order;

(5) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Order;

(6) Post, at its place of business in New York, New York, copies of the notices hereto attached and marked "Appendix A" and "Appendix B."[13] Copies of said no-

[13] In the event this Order is enforced by a decree of the United States Court of Appeals, the notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

tices, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by authorized representatives of the respective Respondents, be posted by the Respondent Company immediately upon receipt thereof, in conspicuous places, including all places where notices to its mail room employees are customarily posted, and maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(7) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, as to the steps the Respondent Company has taken to comply herewith.

II. The Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Executing, giving effect to, maintaining or enforcing, or causing or attempting to cause the News Syndicate Company, Inc. or the Wall Street Journal, Dow Jones & Company, Inc., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, or maintaining or enforcing any agreement, understanding or practice with the said Companies, or any other publisher in New York City, under which employment in the mail rooms of said publishers is conditioned on union membership, preference in employment is accorded to union members, or the control and

maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to the Respondent Union, except where, and to the extent that, such condition of employment may be lawfully established by an agreement in conformity with Section 8 (a) (3) of the Act;

(2) Enforcing or giving effect to any contract provision requiring mail room foremen and superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by Respondent Union that they are not obligated to comply with specified provisions of the International Typographical Union, AFL-CIO, General Laws and Respondent Union's Constitution and By-Laws calling for closed shop union preferential hiring;

(3) Causing, or attempting to cause, the above-named Companies, or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

(4) In any other manner restraining or coercing employees of, or applicants for employment by, the above-named Companies, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement under Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications.

(1) Specify, in the current contract with the above-named Companies that the provisions of the International Typographical Union, AFL-CIO, General Laws which are found illegal herein are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein, and currently operative.

(2) Notify all its members that, in connection with their employment in the News mail room, in the Wall Street Journal mail room of Dow Jones, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the International Typographical Union, AFL-CIO, General Laws which call for closed shop or union preferential hiring. Such notice shall be in addition to that covered by the posting of the notices specified in paragraphs II. (b) (5) and (6) of this Order;

(3) Make whole Burton Randall for loss of earnings he suffered on June 10, 1956, and thereafter, as a result of the discrimination against him, as provided for in "The remedy" section of the Intermediate Report as amended by "The Remedy" in this Decision and Order:

(4) Make whole Julius Arrigale for loss of earnings he suffered on September 18, and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him;

(5) Post, in conspicuous places in its business offices in New York, New York, copies of the notice hereto attached and marked "Appendix B."[14] Copies of said notice, to be furnished by the Regional Director for the Sec-

[14] See Footnote 13.

ond Region, shall, after being duly signed by an authorized representative of the Respondent Union, be posted by it immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(6) Additional copies of the notices hereto attached as "Appendix B," shall be signed by a representative of the Respondent Union and forthwith returned to the Regional Director for the Second Region. These notices shal be posted by the News Syndicate Company, Inc. in places where notices to its mail room employees are customarily posted. These notices shall also be posted, the Wall Street Journal, Dow Jones & Company, Inc., willing, in places where notices to its mail room employees are customarily posted;

(7) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, as to the steps the Respondent Union has taken to comply herewith.

III. The Respondent Company, News Syndicate Company, Inc., its officers, agents, successors and assigns and the Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL-CIO, its officers, representatives, agents, successors and assigns, shall jointly and severally, reimburse the employees and former employees employed in the mail room of the Respondent Company for monies illegally exacted from them in the manner and to the extent set forth in "The Remedy" section

of this Decision and Order. The Respondent Union, its officers, representatives, agents, successors and assigns shall reimburse the employees and former employees employed in the mail room of the Wall Street Journal, Dow Jones & Company, Inc., for monies illegally exacted from them in the manner and to the extent set forth in "The Remedy" section of this Decision and Order.

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT execute, give effect to, maintain or enforce, the provisions of a written agreement which NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, nor will we maintain or enforce any arrangement, understanding or practice with the said Union, under which employment in our mail room is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to said Union, except to the extent permitted by Section 8 (a)(3) of the Act.

WE WILL NOT enforce or give effect to the provisions in our agreement with the above-named Union,

requiring mail room foremen or superintendents, who do the hiring, to be union members, unless and until said foremen and superintendents have been directly informed by said Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws or the above-named Union's Constitution and By-Laws calling for closed shop or union preferential hiring.

WE WILL NOT encourage membership in or support of the above-named Union, or any other labor organization of our employees, by discriminating against employees, or applicants for employment in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a)(3) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a)(3) of the Act.

WE WILL specify, in our current agreement with the above-named Union, that the provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO General Laws which have been found by the National Labor Relations Board to be illegal, are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein and currently operative.

Appendix A attached to Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications.

WE WILL notify all our mail room employees that they are not bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

WE WILL restore the seniority status of BURTON RANDALL to that which he held on all nights prior to the discrimination practiced against him on June 10 and July 22, 1956.

WE WILL make whole BURTON RANDALL for loss of earnings which he has suffered on June 10, 1956, and thereafter, as a result of the discrimination against him, and in accordance with the Board's direction.

WE WILL refund to all our employees and former employees who have remitted initiation fees, or periodic dues or other monies illegally extracted from them to NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, the amount of such payments, and in accordance with the Board's direction.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a)(3) of the National Labor Relations Act, as amended.

NEWS SYNDICATE COMPANY, INC.,
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B attached to Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications.

APPENDIX B.

NOTICE TO ALL MEMBERS OF NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, AND TO EMPLOYEES OF NEWS SYNDICATE COMPANY, INC., AND THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT execute, give effect to, maintain or enforce, or cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, to execute, give effect to, maintain or enforce, the provisions of a written agreement, nor will we maintain or enforce any arrangement, understanding or practice with the above-named Companies, or with any other publisher in New York City, under which employment in the mail rooms of said publishers is conditioned on union membership, preference in employment is accorded to union members, or the control and maintenance of the employment seniority and priority, apprenticeship training, or competency testing systems is delegated to our Union, except to the extent permitted by Section 8 (a) (3) of the Act.

Appendix B attached to Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications.

WE WILL NOT enforce or give effect to the provisions in our agreement with the NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or with any other publisher in New York City, requiring mail room foremen or superintendents, who do the hiring, to be members of our Union, unless and until said foremen and superintendents have been directly informed by our Union that they are not obligated to comply with specified provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws and our Constitution and By-Laws, which call for closed shop or preferential hiring.

WE WILL NOT cause or attempt to cause NEWS SYNDICATE COMPANY, INC., or THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., or any other publisher in New York City, unlawfully to discriminate against mail room employees, or applicants for employment, in any manner in regard to hire, tenure, or terms and conditions of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment by, the above-named Companies, or any other publisher in New York City, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement permitted under Section 8 (a) (3) of the Act.

Appendix B attached to Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications.

WE WILL specify, in our current agreement with the above-named Companies, that the provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which have been found by the National Labor Relations Board to be illegal, are not incorporated therein, and specify which of the provisions of the General Laws are incorporated therein and currently operative.

WE WILL notify all our members that, in connection with their employment in the mail rooms of the above-named Companies, or in the mail room of any other publisher in New York City, they will not be bound to follow the specific provisions of the INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, General Laws which call for closed shop or union preferential hiring.

WE WILL make whole BURTON RANDALL for loss of earnings he has suffered on June 10, 1956 and thereafter, as a result of the discrimination against him in connection with his employment in the mail room of the NEWS SYNICATE COMPANY, INC., and in accordance with the Board's direction.

WE WILL make whole JULIUS ARRIGALE for loss of earnings he suffered on September 18 and 19, 1956, and may have suffered on any other night since March 18, 1956, as a result of the discrimination against him in connection with his employment in the mail room of THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC.

Answer of Respondent News Syndicate Co. Inc., to the Petition for Enforcement and the Amended Petition for Enforcement dated May 1, 1959.

WE WILL refund to all the employees or former employees employed in the mail rooms of the NEWS SYNDICATE COMPANY, INC. and THE WALL STREET JOURNAL, DOW JONES & COMPANY, INC., the initiation fees, or periodic dues or any other monies illegally extracted from them which they have paid to our union, and in accordance with the Board's direction.

NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Answer of respondent News Syndicate Co. Inc. to the petition for enforcement of an order of the National Labor Relations Board and to the amended petition of the National Labor Relations Board for enforcement of its order with modifications.

Respondent News Syndicate Co. Inc., by its attorneys, Townley, Updike, Carter & Rodgers, for its answer to the petition and amended petition herein:

FIRST: Denies each and all allegations contained in paragraph "1" of said petition, except admits that re-

spondent News Syndicate Co. Inc. is engaged in business in the State of New York within this judicial circuit and that this Court has jurisdiction of this petition by virtue of Section 10(c) of the National Labor Relations Act, as amended.

SECOND: Denies each and all allegations contained in paragraph "2" of said petition, except admits that the Board on January 2, 1959, stated its Findings of Fact and Conclusions of Law and issued an order directed to the respondents and served said decision and order upon respondent News Syndicate Co. Inc.

THIRD: Denies that it has knowledge or information sufficient to form a belief as to each and all allegations contained in paragraph "3" of said petition.

FOURTH: Admits each and all allegations contained in paragraphs "1" through "7" of said amended petition.

Further answering the petition and amended petition herein, respondent News Syndicate Co. Inc. respectfully shows and alleges:

FIFTH: The Board, by its decision and order of January 2, 1959, made findings and conclusions in addition to those made by the Trial Examiner in the Intermediate Report, dated April 15, 1958. Such additional findings and conclusions made by the Board are not supported by substantial evidence on the record considered as a whole and are erroneous as a matter of law.

SIXTH: The Board, by its decision and order of January 2, 1959, misinterpreted and misapplied findings and conclusions of the Trial Examiner.

Answer of Respondent News Syndicate Co. Inc., to the Petition for Enforcement and the Amended Petition for Enforcement dated May 1, 1959.

SEVENTH: The Board, by its decision and order of January 2, 1959, paragraph III, provided for a remedy against respondent News Syndicate Co. Inc. that is penal in nature, is inequitable and unjust in the circumstances, and is beyond the powers of the Board under Sections 10(a) and 10(c) of the National Labor Relations Act, as amended.

EIGHTH: Said paragraph III of the Board's decision and order of January 2, 1959, directs respondent News Syndicate Co. Inc. to "reimburse" monies "illegally exacted" from employees and former employees in its mail room, without finding that respondent News Syndicate Co. Inc. ever collected, received, withheld, or had in its possession any monies belonging to its employees or former employees.

NINTH: Respondent News Syndicate Co. Inc. does not check off Union dues, initiation fees or any other monies from the wages of employees in its mail room, who are members of respondent Union, and has not illegally exacted, collected, received, withheld or had in its possession any monies belonging to its employees or former employees. Members of respondent Union pay their dues, and initiation fees and assessments directly to the Union and the Union retains such payments.

TENTH: Said remedy directing respondent News Syndicate Co. Inc. to reimburse dues and initiation fees was imposed by the Board without prior notice to respondent News Syndicate Co. Inc. The charge and the complaint herein did not allege that respondent News Syndicate Co.

Inc. had illegally exacted monies from its employees or had illegally coerced them to become members of the respondent Union. The Trial Examiner did not recommend imposition of the remedy described in paragraph III of the Board's order and the General Counsel did not request it in the form of an exception to the Intermediate Report, or otherwise. The imposition of this remedy against respondent News Syndicate Co. Inc. deprives it of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and Section 102.46(b) of the Rules and Regulations of the Board.

ELEVENTH: The provisions of the contract held by the Board to be violative of the Act were not illegal when originally enacted and had not been declared illegal in any proceeding prior to the determination by the Board herein. Said provisions were included in the contract in question for the benefit of and upon the insistence of the respondent Union and its parent Union, the International Typographical Union. The severe penalty imposed upon respondent News Syndicate Co. Inc. is not warranted in this case and is inconsistent with the policies and purposes of the National Labor Relations Act, as amended.

TWELFTH: The Board failed to follow and apply its own Rules and Regulations in going beyond its declared statutory power to "adopt, modify or reject the findings and recommendations of the Trial Examiner" and enlarging upon the Trial Examiner's recommendations and findings and imposing a remedy not suggested by the Trial Examiner or requested by the General Counsel.

Answer of Respondent News Syndicate Co. Inc., to the Petition for Enforcement and the Amended Petition for Enforcement dated May 4, 1959.

THIRTEENTH: The remedy of reimbursement of dues and initiation fees punishes respondent News Syndicate Co. Inc. much more severely than it does the respondent Union. The liability is imposed "jointly and severally" but the respondent News Syndicate Co. Inc. is required to pay over one-half of a sum of money it did not receive, whereas the respondent Union will be permitted to retain one-half of the monies the Board has found to have been "illegally exacted" from members of the respondent Union.

FOURTEENTH: The Board's order requires reimbursement of dues to members of the Union without regard to the fact that many of the members joined the Union prior to passage of the Taft-Hartley Act and many prior to the execution of the contract now found to contain illegal provisions. None of these members were illegally coerced into membership in respondent Union.

FIFTEENTH: Respondent Union does not exist apart from its members. Reimbursement of dues to said members to the extent that said reimbursement is made by respondent News Syndicate Co. Inc. is in effect the granting of a reward to all members for insisting upon and securing contract provisions for their benefit, which provisions the Board now finds to be illegal.

SIXTEENTH: The provisions of the contract and the hiring practices found to be illegal by the Board as constituting an "unlawful closed shop and preferential employment conditions" make membership in the Union less mandatory than a legal Union shop provision under Section 8(a)(3) of the Act. The contract does not contain a Union

shop provision because the respondent Union and its parent organization, the International Typographical Union, has elected, as a matter of policy, not to comply with the Act. Employees join the respondent Union as a matter of free choice and need not do so in order to maintain their employment with respondent News Syndicate Co. Inc.

SEVENTEENTH: The fact that all regular employees elect to become members of the Union does not establish any discrimination against non-Union employees. The determinations made by the Board, but expressly not made by the Trial Examiner, that "the operation of the apprenticeship and competency systems were initial devices whereby respondents assured to the respondent Union control over the flow of new employees into the Employer's mail room" and that such program "gave unlawful preference for jobs to members of the respondent Union" are not supported by substantial evidence in the record and are erroneous as a matter of law.

EIGHTEENTH: Respondent News Syndicate Co. Inc., as found by the Trial Examiner, gave regular substitute status to 31 non-Union shapers who had worked regularly on an average of three days per week. All of these men elected to join the Union when eligible for membership. The charging party, Burton Randall, did not qualify for promotion to regular substitute status or for membership in the Union, because he did not work frequently enough. Randall has full time employment outside the newspaper industry and cannot devote enough time to the industry to qualify as a regular situation holder or a regular substitute.

Answer of Respondent News Syndicate Co. Inc., to the Petition for Enforcement and the Amended Petition for Enforcement dated May 1, 1959.

NINETEENTH: The Board's determination that Randall lost overtime is not supported by substantial evidence in the record. Overtime in the mail room of respondent News Syndicate Co. Inc. depends upon many, various factors and no evidence in the record supports a finding that Randall lost any overtime as a result of any discrimination. The Trial Examiner found that the General Counsel did not prove that diminution in Randall's overtime was due to discrimination against him. The Board's overruling of this finding and determination was not based upon substantial evidence in the record and is erroneous as a matter of law.

WHEREFORE, respondent News Syndicate Co. Inc. prays that the petition and the amended petition for enforcement of the Board's orders be denied and set aside, insofar as said orders require respondent News Syndicate Co Inc. to "reimburse" employees and former employees for monies "illegally exacted" from them and to make whole Burton Randall for loss of overtime, and that this Court give such other and further relief to respondent News Syndicate Co. Inc. as may be appropriate.

Dated: New York, N. Y., May 4, 1959.

TOWNLEY, UPDIKE, CARTER & RODGERS,
By J. H. CARTER,
A Member of the Firm,
Attorneys for Respondent,
News Syndicate Co. Inc.,
220 East 42nd Street,
New York 17, N. Y.

CERTIFICATE OF SERVICE.

The undersigned certifies that one copy of the Answer of Respondent News Syndicate Co. Inc. to the Petition for Enforcement of an Order of the National Labor Relations Board and to the Amended Petition of the National Labor Relations Board for Enforcement of its Order with Modifications was this day, within the time specified in a stipulation, dated April 15, 1959, duly served by first class mail upon the following counsel at the addresses listed below:

Thomas J. McDermott, Esq.
Associate General Counsel
National Labor Relations Board
Washington 25, D. C.

Sidney Sugarman, Esq.
Attorney for Respondent Union
295 Madison Avenue
New York 17, N. Y.

David I. Shapiro, Esq.
Attorney for International
Typographical Union
318 Shoreham Building,
Washington 5, D. C.

Dated: New York, N. Y., May 4, 1959.

TOWNLEY, UPDIKE, CARTER & RODGERS.
By ANDREW L. HUGHES,
Attorneys for Respondent News Syndicate Co. Inc.,
220 East 42nd Street,
New York 17, N. Y.

BATAVIA TIMES LAW PRINTERS
BATAVIA, N. Y.
7-15-59-75

793 In United States Court of Appeals for the Second Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Motion of respondent, New York Mailers' Union No. 6 To Dismiss the Petition and for Other Appropriate Relief

Filed February 5, 1959

Now comes New York Mailers' Union No. 6, one of the respondents in the above-entitled matter, and moves this honorable Court to dismiss the petition for enforcement and for such other relief as the Court may deem appropriate. This motion is made pursuant to Rule 19 of this Court.

This petition was brought pursuant to § 10(e) of the Labor-Management Relations Act of 1947 by the National Labor Relations Board to enforce an order entered by it against respondent News Syndicate Company, Inc., a newspaper publisher, and respondent New York Mailers' Union No. 6, a labor organization, on January 2, 1959. The object of the present motion is to dismiss the petition on the ground that it has been filed prematurely, and for such other relief as the Court may find appropriate, in order that respondents may have the opportunity to exercise their rights under § 10(f) of the LMRA to obtain a review of the Board's order in the United States Court of Appeals for the District of Columbia. The Board's petition is premature for the following reasons: 1) The Board failed to comply with its own Statements of Procedure that compliance with its orders shall be sought before a petition for enforcement is filed; 2) Respondent Mailers' had filed a petition for rehearing which was pending before the Board; 3) Respond-

ent News Syndicate had notified the Board that it
794 would also file a petition for rehearing; 4) The order of January 2, 1959 was amended in a material respect subsequent to the filing of the petition. A brief amplifying these contentions is submitted herewith.

Respectfully submitted.

(S) SIDNEY SUGERMAN,
295 Madison Avenue, New York 17, New York,
Attorney for Respondent,
New York Mailers' Union No. 6.

GERHARD P. VAN ARKEL,
GEORGE KAUFMANN,
VAN ARKEL & KAISER,
1701 K Street NW., Washington 6, D.C.,
Of Counsel.

795 Respondent's motion to dismiss enforcement petition denied. Entered MB. Notices sent 2-5-59. Hon. Charles E. Clark, Chief Judge. Hon. J. Warren Madden, Judge Court of Claims. Hon. Carroll C. Hincks, USCJ.

[File endorsement omitted.]

796 In United States Court of Appeals for the Second Circuit

[Title omitted.]

Opposition of the National Labor Relations Board to motion of respondent New York Mailers' Union No. 6 to dismiss the petition and for other appropriate relief

Filed February 5, 1959

The National Labor Relations Board, by its Associate General Counsel, requests the Court, for the reasons set out below, to deny respondent Union's motion to dismiss the petition for enforcement of its order issued against respondents on January 2, 1959.

1. The Board's order expressly recited that respondent should notify the Board's Regional Director in New York City "in writing, within ten (10) days from the date of this Order, as to the steps • • • taken to comply herewith." No such

notification having been received from either respondent, the Regional Director on January 14, 1959, recommended that enforcement proceedings be instituted.

2. The proceedings in this case made it abundantly clear that compliance would not be forthcoming until a reviewing court has passed upon the "substantial number of complex legal issues of major importance in the administration of the Act" (respondent Union's brief in support of motion, p. 2), involved in this case. The Board, accordingly, promptly filed its petition for enforcement in this Court to obtain expeditious
797 judicial review of its order in the judicial circuit where the unfair labor practices occurred and where the parties affected reside and transact their business, as prescribed by Section 10(e) of the National Labor Relations Act.

3. Respondent Union has no tenable ground for objecting to this procedure which is in complete conformity with the statutory scheme. While ostensibly complaining that it was not afforded an adequate opportunity for compliance before the petition for enforcement was filed—a contention lacking in merit, as we show below—respondent Union does not even now suggest that it would avail itself of such an opportunity. Instead, the recitals in its motion and supporting brief plainly disclose that the relief here sought is for the purpose of affording it an opportunity to obtain review in the Court of Appeals for the District of Columbia Circuit rather than have this Court review the issues. Respondent Union points to no tenable ground in law or in fact to warrant such relief.

4. Moreover, respondent Union errs in suggesting that the Board violated Section 101.13 of its Statements of Procedure in filing a petition for enforcement before its Regional Director had formally ascertained from respondents that they would not comply with the Board's order. Paragraph (b) of that Section (reprinted in respondent Union's brief in support of motion, p. 3) expressly recites the established legal principle that the Board may seek an enforcing decree even where there has been compliance with its order. N.L.R.B. v. Mexia Textile Mills, Inc., 339 U.S. 563. There is patently no basis, therefore, for a claim that Section 101.13 can be interpreted so as to preclude the Board's action here merely because, in respondent

Union's view, an adequate opportunity for compliance has not been afforded.[1]

798 5. The Board's petition for enforcement is not premature because respondent Union's petition for rehearing is pending before the Board. Section 10(d) of the Act expressly authorizes the Board to modify its order "until the record * * * shall have been filed in court."[2] Thus, until the Board files the record in this case, it has full authority to consider and pass upon respondent Union's petition for rehearing, and will do so.[3] Indeed, the very purpose of Section 10(d) is to afford the Board an opportunity after the filing of a petition for enforcement to exercise its authority, independently of judicial control, to correct mistakes or inadvertencies, or to modify its order "so as to make it comport with right and justice." (In re N.L.R.B., 304 U.S. 486, 494). See Senate Report 2129, 85th Cong., 2nd Sess., p. 3. The Board has, in fact, already utilized its authority under Section 10(d) to correct its order (Un. Br. 13).

For the foregoing reasons, we respectfully submit that the Court should deny respondent Union's motion to dismiss the petition for enforcement.

THOMAS J. MCDERMOTT,
Associate General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this 30th day of January, 1959.

799 [File endorsement omitted.]

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[1] Madden v. Masters, Mates, & Pilots, 259 F. 2d 297 (Un. Br. 5–6) is not in point. Section 10(1) of the Act requires a preliminary investigation into the merits of unfair labor practice charges before a Board Regional Director may petition for injunctive relief under that section. The Board's Statement of Procedures incorporates this statutory requirement. Section 101.13, however, merely describes Board compliance procedures and, as we have shown, like the Act, does not require a compliance investigation as a condition precedent to the filing of a petition for enforcement.

[2] Respondent Union in essence, acknowledges the fact that Public Law 85–791 (72 Stat. 941) makes no material change in this regard.

[3] The Board's action in this regard will of course become a part of the certified record and subject to review by this Court. It is hardly necessary, therefore, to stress the fact that respondents would not in any event be precluded by Section 10(e) of the Act from urging objections before the Court to any new matters as to which no opportunity for objection before the Board had been afforded.

800 In United States Court of Appeals, Second Circuit

Present: Hon. CHARLES E. CLARK, Chief Judge; Hon. J. WARREN MADDEN, Judge, Court of Claims; Hon. CARROL G. HINCKS, Circuit Judges

[Title omitted.]

Order denying motion to dismiss petition

February 5, 1959

A motion having been made herein by counsel for the respondent to dismiss the petition for enforcement for lack or jurisdiction,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

801 [File endorsement omitted.]

802 In United States Court of Appeals for the Second Circuit

[Title omitted]

Order extending time to file answer to petition for enforcement

February 3, 1959

It is hereby stipulated and agreed by and between the General Counsel of the National Labor Relations Board and the attorneys for respondent News Syndicate Co. Inc. that the time of respondent News Syndicate Co. Inc. to answer the petition for enforcement of an order of the National Labor Relations Board, which petition for enforcement is dated January 16, 1959, be and the same hereby is extended from February 5, 1959, to a date twenty days after the National Labor Relations Board takes final action with respect to a petition for rehearing filed by respondent New York Mailers' Union No. 6, dated January 15, 1959, and a petition for rehearing to be filed by respondent News Syndicate Co. Inc.

Dated: New York, N.Y., February 3, 1959.

MARCEL MALLET-PREVOST,
Assistant General Counsel of the
National Labor Relations Board.
TOWNLEY, UPDIKE, CARTER
& RODGERS,
Attorneys for Respondent,
News Syndicate Co., Inc.

So ordered:
LEARNED HAND,
USCJ.

803 In United States Court of Appeals for the Second Circuit

Docket No. 25496

[Title omitted:]

Answer of Respondent New York Mailers' Union No. 6, International Typographical Union (AFL–CIO)

Filed March 20, 1959

Now comes New York Mailers' Union No. 6 (ITU) (AFL–CIO), one of the respondents in this proceeding to enforce an Order of the National Labor Relations Board, and for its Answer states as follows:

A. The provisions of the Order predicated on the alleged discrimination against Randall should be denied enforcement for the following reasons:

1. The finding that the Union caused The News to discriminate against Randall with regard to hire and tenure of employment within the meaning of Sec. 8(b)(2) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10(e) of the Act.

2. The finding that in relation to the discharge of Randall the Union restrained and coerced employees within the meaning of Sec. 8(b)(1)(A) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10(e) of the Act.

804 3. The conclusions that, with respect to the discharge of Randall, the Union violated Sec. 8(b)(1)(A) and Sec. 8(b)(2) are erroneous as a matter of law.

B. The provisions of the Order predicated on the alleged discrimination against Arrigale should be denied enforcement for the following reasons:

1. The finding that the Union caused The Journal to discriminate against Arrigale with regard to hire and tenure of employment within the meaning of Sec. 8(b)(2) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10(e) of the Act.

2. The finding that in relation to the discharge of Arrigale the Union restrained and coerced employees within the meaning of Sec. 8(b)(1)(A) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10(e) of the Act.

3. The conclusions that, with respect to the discharge of Arrigale, the Union violated Sec. 8(b)(1)(A) and Sec. 8(b)(2) are erroneous as a matter of law.

C. The provisions of the Order predicated on the agreements between the Union and The News, The Journal, and other publishers in New York City should be denied enforcement for the following reasons:

1. The finding that by executing, maintaining, and enforcing the aforesaid agreements the Union violated Sec. 8(b)(1)(A) and Sec. 8(b)(2) of the Act is not supported by substantial evidence on the record considered as a whole as required by Sec. 10(e) of the Act.

805 2. The conclusions that the execution, maintenance, and enforcement of the aforesaid agreements are illegal in whole or in part under Sec. 8(b)(1)(A) and Sec. 8(b)(2) of the Act are erroneous as a matter of law.

3. In making the foregoing findings and conclusions the Board indulged in presumptions beyond the Board's power, inconsistent with the Act and contrary to the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

4. Insofar as the Board's findings and conclusions are based on the laws, constitution, or other membership rules of Inter-

national Typographical Union (AFL–CIO) or of respondent New York Mailers' Union No. 6, they are contrary to the proviso to Sec. 8(b)(1)(A) of the Act.

5. The Complaint failed to state, and the Board failed to find, whether respondent Union "caused" or "attempted to cause" the respective employers to violate Sec. 8(a)(3) of the Act by executing, maintaining, and enforcing the aforesaid agreements. Accordingly:

a. The Complaint did not adequately allege, and the Board failed properly to find, that respondent Union had violated Sec. 8(b)(2) by any such acts.

b. Respondent Union was denied its rights under Sec. 102.15 of the Board's Rules and Regulations, Sec. 101.8 and Sec. 101.12 of the Board's Statements of Procedure, Sec. 10(b) and Sec. 10(c) of the Act, Sec. 5 of the Administrative Procedure Act, and under the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

806 D. The individual parts and provisions of the Order should be denied enforcement for the foregoing reasons and for other reasons as specified by paragraphs below:

Par. II(a)(1): This provision is beyond the powers of the Board under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II(a)(2): This provision is beyond the Board's powers under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, is expressly forbidden by the proviso to Sec. 8(b)(1)(A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II(a)(3): This provision is beyond the powers of the Board under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II(a)(4): This provision is beyond the powers of the Board under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, and violates

the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, because of the change made by the Order of January 21, 1959, is beyond the Board's power under Sec. 10(d) of the Act.

807 Par. II(b)(1): This provision is beyond the Board's powers under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10(d) of the Act.

Par. II(b)(2): This provision is beyond the Board's powers under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, is expressly forbidden by the proviso to Sec. 8(b)(1)(A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II(b)(3): This provision for back pay to Randall is beyond the powers of the Board under Sec. 10(a) and Sec. 10(c) of the Act, is based on inadequate findings unsupported by substantial evidence on the record considered as a whole under Sec. 10(e) of the Act and Sec. 10 of the Administrative Procedure Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

Par. II(b)(4): This provision for back pay to Arrigale is beyond the powers of the Board under Sec. 10(a) and Sec. 10(c) of the Act, is based on inadequate findings unsupported by substantial evidence on the record considered as a whole under Sec. 10(e) of the Act and Sec. 10 of the Administrative Procedure Act, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

808 Par. II(b)(5): This provision, by requiring respondent Union to post notices to the effect that the other portions of the Order have been complied with, is illegal for the same reason as is the Order to which it refers, as set out herein; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10(d) of the Act.

Par. II(b)(6): This provision, by requiring respondent Union to post notices that it will not perform certain acts, is

beyond the Board's powers under Sec. 10(a) and Sec. 10(c) of the Act, is based on findings inadequate under Sec. 10(e) of the Act, is expressly forbidden by the proviso to Sec. 8(b)(1)(A) of the Act, and violates the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution; moreover, the change made by the Order of March 2, 1959, is beyond the Board's power under Sec. 10(d) of the Act.

Par. III: This provision of the Order is beyond the Board's powers under Sec. 10(a) and Sec. 10(c) of the Act, and is based on findings inadequate under Sec. 10(e) of the Act; further, the Complaint did not allege the existence of facts on which this provision of the Order is predicated; the Trial Examiner did not recommend that this provision or any such purported remedy be included in the Order; and the General Counsel did not except to such failure to recommend. Respondent Union thereby was denied its rights under Sec. 102.15 and Sec. 102.46 of the Board's Rules and Regulations, Sec. 101.8 and Sec. 101.12 of the Board's Statements of Procedure, Sec. 10(b) of the Act, Sec. 5 and Sec. 8 of the Administrative Procedure Act, and under the Due Process Clause of the Fifth Amendment to the United States Constitution.

809

Wherefore, respondent Union prays that the petition for enforcement of the Order be in whole denied, that the Order be set aside in its entirety, and that the Court give such other and further relief to respondent Union as may be appropriate.

Dated, New York, N.Y., March 19, 1959.

(S) SIDNEY SUGERMAN,

Attorney for respondent, New York Mailers' Union No. 6, International Typographical Union, AFL–CIO, Address: 295 Madison Avenue, New York 17, N.Y.

810 Certificate of service (omitted in printing).

811 [File endorsement omitted.]

812 In United States Court of Appeals for the Second Circuit

Docket No. 25496

[Title omitted.]

Order extending time to file answer to amended petition for enforcement

March 31, 1959

It is hereby stipulated and agreed by and between counsel for the National Labor Relations Board and the attorneys for respondent News Syndicate Co. Inc. that the time of respondend News Syndicate Co. Inc. to answer the petition for enforcement of an order of the National Labor Relations Board, which petition for enforcement is dated January 16, 1959, be and the same hereby is extended from March 23, 1959, to April 15, 1959, or to a date twenty days after service of an amended petition for enforcement, whichever is later.

Dated: New York, N.Y., March 23, 1959.

MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

TOWNLEY, UPDIKE, CARTER & RODGERS,
Attorneys for Respondent,
News Syndicate Co. Inc.

So ordered, March 31, 1959.

HAROLD M. MEDINA.

813 [File endorsement omitted.]

814 In United States Court of Appeals for the Second Circuit

Docket No. 25496

[Title omitted.]

Order extending time to file answer to amended petition for enforcement

April 20, 1959

It is hereby stipulated and agreed by and between counsel for the National Labor Relations Board and the attorneys for respondent News Syndicate Co. Inc. that the time of respondent News Syndicate Co. Inc. to answer the amended petition of the National Labor Relations Board for enforcement of its order with modifications, dated March 23, 1959, be and the same hereby is extended from April 15, 1959, to May 5, 1959.

Dated: New York, N.Y., April 15, 1959.

MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

TOWNLEY, UPDIKE, CARTER & RODGERS,
Attorneys for Respondent,
News Syndicate Co. Inc.

So ordered: April 20, 1959.

A. DANIEL FUSARO, *Clerk.*

815 [File endorsement omitted.]

816 In United States Court of Appeals for the Second Circuit

Docket No. 25496

NATIONAL LABOR RELATIONS BOARD, PETITIONER

AGAINST

NEWS SYNDICATE CO. INC., AND NEW YORK MAILERS' UNION No. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO, RESPONDENTS

Answer of respondent News Syndicate Co. Inc. to the petition for enforcement of an order of the National Labor Relations Board and to the amended petition of the National Labor Relations Board for enforcement of its order with modifications

Filed May 4, 1959

Respondent News Syndicate Co. Inc., by its attorneys, Townley, Updike, Carter & Rodgers, for its answer to the petition and amended petition herein:

First: Denies each and all allegations contained in paragraph "1" of said petition, except admits that respondent News Syndicate Co. Inc. is engaged in business in the State of New York within this judicial circuit and that this Court has jurisdiction of this petition by virtue of Section 10(c) of the National Labor Relations Act, as amended.

Second: Denies each and all allegations contained in paragraph "2" of said petition, except admits that the Board on January 2, 1959, stated its Findings of Fact and Conclusions of Law and issued an order directed to the respondents and served said decision and order upon respondent News Syndicate Co Inc.

[File endorsement omitted.]

817 Third: Denies that it has knowledge or information sufficient to form a belief as to each and all allegations contained in paragraph "3" of said petition.

Fourth: Admits each and all allegations contained in paragraphs "1" through "7" of said amended petition.

Further answering the petition and amended petition herein, respondent News Syndicate Co. Inc. respectfully shows and alleges:

Fifth: The Board, by its decision and order of January 2, 1959, made findings and conclusions in addition to those made by the Trial Examiner in the Intermediate Report, dated April 15, 1958. Such additional findings and conclusions made by the Board are not supported by substantial evidence on the record considered as a whole and are erroneous as a matter of law.

Sixth: The Board, by its decision and order of January 2, 1959, misinterpreted and misapplied findings and conclusions of the Trial Examiner.

Seventh: The Board, by its decision and order of January 2, 1959, paragraph III, provided for a remedy against respondent News Syndicate Co. Inc. that is penal in nature, is inequitable and unjust in the circumstances, and is beyond the powers of the Board under Sections 10(a) and 10(c) of the National Labor Relations Act, as amended.

Eighth: Said paragraph III of the Board's decision and order of January 2, 1959, directs respondent News Syndicate Co. Inc. to "reimburse" monies "illegally exacted" from employees and former employees in its mail room, without finding
818 that respondent News Syndicate Co. Inc. ever collected, received, withheld, or had in its possession any monies belonging to its employees or former employees.

Ninth: Respondent News Syndicate Co. Inc. does not check off Union dues, initiation fees or any other monies from the wages of employees in its mail room, who are members of respondent Union, and has not illegally exacted, collected, received, withheld or had in its possession any monies belonging to its employees or former employees. Members of respondent Union pay their dues, and initiation fees and assessments directly to the Union and the Union retains such payments.

Tenth: Said remedy directing respondent News Syndicate Co. Inc. to reimburse dues and initiation fees was imposed by the Board without prior notice to respondent News Syndicate Co. Inc. The charge and the complaint herein did not allege that respondent News Syndicate Co. Inc. had illegally exacted

monies from its employees or had illegally coerced them to become members of the respondent Union. The Trial Examiner did not recommend imposition of the remedy described in paragraph III of the Board's order and the General Counsel did not request it in the form of an exception to the Intermediate Report, or otherwise. The imposition of this remedy against respondent News Syndicate Co. Inc. deprives it of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and Section 102.46(b) of the Rules and Regulations of the Board.

Eleventh: The provisions of the contract held by the Board to be violative of the Act were not illegal when originally enacted and had not been declared illegal in any proceed-
819 ing prior to the determination by the Board herein. Said provisions were included in the contract in question for the benefit of and upon the insistence of the respondent Union and its parent Union, the International Typographical Union. The severe penalty imposed upon respondent News Syndicate Co. Inc. is not warranted in this case and is inconsistent with the policies and purposes of the National Labor Relations Act, as amended.

Twelfth: The Board failed to follow and apply its own Rules and Regulations in going beyond its declared statutory power to "adopt, modify or reject the findings and recommendations of the Trial Examiner" and enlarging upon the Trial Examiner's recommendations and findings and imposing a remedy not suggested by the Trial Examiner or requested by the General Counsel.

Thirteenth: The remedy of reimbursement of dues and initiation fees punishes respondent News Syndicate Co. Inc. much more severely than it does the respondent Union. The liability is imposed "jointly and severally" but the respondent News Syndicate Co. Inc. is required to pay over one-half of a sum of money it did not receive, whereas the respondent Union will be permitted to retain one-half of the monies the Board has found to have been "illegally exacted" from members of the respondent Union.

Fourteenth: The Board's order requires reimbursement of dues to members of the Union without regard to the fact that

many of the members joined the Union prior to passage of the Taft-Hartley Act and many prior to the execution of the contract now found to contain illegal provisions. None of these members were illegally coerced into membership in respondent Union.

820 Fifteenth: Respondent Union does not exist apart from its members. Reimbursement of dues to said members to the extent that said reimbursement is made by respondent News Syndicate Co. Inc. is in effect the granting of a reward to all members for insisting upon and securing contract provisions for their benefit, which provisions the Board now finds to be illegal.

Sixteenth: The provisions of the contract and the hiring practices found to be illegal by the Board as constituting an "unlawful closed shop and preferential employment conditions" make membership in the Union less mandatory than a legal Union shop provision under Section 8(a)(3) of the Act. The contract does not contain a Union shop provision because the respondent Union and its parent organization, the International Typographical Union, has elected, as a matter of policy, not to comply with the Act. Employees join the respondent Union as a matter of free choice and need not do so in order to maintain their employment with respondent News Syndicate Co. Inc.

Seventeenth: The fact that all regular employees elect to become members of the Union does not establish any discrimination against non-Union employees. The determinations made by the Board, but expressly not made by the Trial Examiner, that "the operation of the apprenticeship and competency systems were initial devices whereby Respondents assured to the Respondent Union control over the flow of new employees into the Employer's mail room" and that such program "gave unlawful preference for jobs to members of the Respondent Union" are not supported by substantial evidence in the record and are erroneous as a matter of law.

821 Eighteenth: Respondent News Syndicate Co. Inc., as found by the Trial Examiner, gave regular substitute status to 31 non-Union shapers who had worked regularly on an average of three days per week. All of these men elected

to join the Union when eligible for membership. The charging party, Burton Randall, did not qualify for promotion to regular substitute status or for membership in the Union, because he did not work frequently enough. Randall has full time employment outside the newspaper industry and cannot devote enough time to the industry to qualify as a regular situation holder or a regular substitute.

Nineteenth: The Board's determination that Randall lost overtime is not supported by substantial evidence in the record. Overtime in the mail room of respondent News Syndicate Co. Inc. depends upon many, various factors and no evidence in the record supports a finding that Randall lost any overtime as a result of any discrimination. The Trial Examiner found that the General Counsel did not prove that diminution in Randall's overtime was due to discrimination against him. The Board's overruling of this finding and determination was not based upon substantial evidence in the record and is erroneous as a matter of law.

Wherefore, respondent News Syndicate Co. Inc. prays that the petition and the amended petition for enforcement of the Board's orders be denied and set aside, insofar as said orders require respondent News Syndicate Co. Inc. to "reimburse" employees and former employees for monies "illegally exacted" from them and to make whole Burton Randall for loss of overtime, and that this Court give such other and further relief to respondent News Syndicate Co. Inc. as may be appropriate.

Dated: New York, N.Y., May 4, 1959.

TOWNLEY, UPDIKE, CARTER & RODGERS,
By J. H. CARTER,
Member of the Firm, Attorneys for Respondent, News Syndicate Co. Inc., 220 East 42nd Street, New York 17, N.Y.

822 Certificate of service (omitted in printing).

823 In United States Court of Appeals for the Second Circuit

No. 25496

[Title omitted.]

Motion of International Typographical Union (AFL–CIO) for leave to intervene, or, in the alternative to appear as amicus curiae

Filed May 11, 1959

The International Typographical Union (AFL–CIO) (hereafter ITU) moves this Honorable Court pursuant to Rule 13(f) for leave to intervene as a party-respondent in the above-entitled proceeding. The ITU further prays that if the motion to intervene be denied that these papers be treated as a motion for leave to appear as amicus curiae, and that this latter motion be granted. In support of the motion to intervene, the ITU states as follows:

1. ITU was a party to the proceeding before the National Labor Relations Board which resulted in the order whose legality is here in issue. ITU moved to intervene before the Board on the ground that it had specialized knowledge regarding the various complex issues in the case, and on the further ground that it was a full party in interest because its contractual arrangements throughout the country were in issue. This motion was granted, and the same factors merit granting of the present motion. Indeed, the events since the Board's decision have borne out the ITU's assertion that the case would have serious ramifications for all subordinate locals. In negotiations
824 throughout the United States since that decision, employers have used the decision as an instrument to deny contract clauses, the legality of which they had not questioned since passage of the Act, and which had been gained by local unions only through hard collective bargaining over the years. If the order of the Board were enforced, these problems for all ITU subordinate locals would inevitably multiply.

2. The Board's order would enjoin the enforcement of some of the ITU General Laws. These General Laws are rules (adopted by ITU members at their conventions) which regulate the relations between the ITU, its locals and members and their employers. They constitute an integral part of the contract between the members. See, e.g., Harker v. McKissock, 7 N.J. 323, 81 A. 2d 480; Alexion v. Hollingsworth, 289 N.Y. 93, 43 N.E. 2d 825; Olson v. Carbonara, 43 LRRM 2778 (Ill. App., March 31, 1959). The Board's order in this case would, if enforced, have the same consequence on these contracts as the order in Consolidated Edison v. NLRB, 305 U.S. 197, had on the collective bargaining agreement in issue there, and the ITU's interest in the enforcement of its membership contracts is indistinguishable from the interest of the union in that case. It would therefore be a denial of due process to deny ITU the right to intervene here to protect its contractual rights in the General Laws.

3. The ITU also has the right to preserve its General Laws as internal membership rules protected by the proviso to § 8(b)(1)(A) of the Act. This right is separate from the rights of individual Locals in the Laws, since the Laws consist also of obligations of the Local to the International.
825 The interest of the ITU in the Laws as membership rules for the purpose of the 8(b)(1)(A) proviso—and as a contract protected by the Due Process Clause—is quite distinct from the interest of the individual Local which is before the Court in this case.

4. The ITU will be in a position to present to this Court many important facts within its specialized knowledge. These include the following:

a. The history of the contractual provisions which are challenged by the Board's order. Some of these date back well over fifty years.

b. The history of litigation involving the ITU since the passage of the Taft-Hartley Act. This history includes adjudications sustaining some of the same contractual provisions which are again attacked here. It also involves constant changes of position on the part of the National Labor Relations Board

and its General Counsel in suits all over the country challenging different practices and General Laws.

5. The ITU should be permitted to intervene not only because of the legal interests which we have shown above, but because as a practical matter this case involves practices central to the entire operation of the ITU since the nineteenth century. The Board's order would turn back the clock and vitiate decades of progress achieved by the members in their working conditions. The present case is only one of many in which the General Counsel has set out to destroy the traditional practices of the ITU; the ITU has been forced to great trouble and expense to preserve its hard-won gains
826 which it sincerely believes to be entirely legal. The acts of discrimination alleged by the Board—even if proven—are so trivial that they would not warrant the attack made on the ITU contracts and General Laws. They are a mere peg on which to hang this broad assault on the ITU.

6. While we earnestly contend the grounds stated in Paragraphs 2 and 3 entitle ITU to intervene as a matter of right, we urge that all the foregoing shows that the Court should exercise its discretion to permit ITU to intervene. If the Court should hold that it is not so entitled, in the alternative the ITU should at the very least be permitted to appear as amicus curiae to represent its interests and present to the Court the many material facts and arguments especially appropriate for presentation by ITU rather than its Local.

Respectfully submitted.

DAVID I. SHAPIRO,
318 Shoreham Building, Washington 5, D.C.,
Attorney for International Typographical Union, AFL–CIO.

827 [File endorsement omitted.]

828 In United States Court of Appeals for the Second Circuit

No. 25496

[Title omitted.]

Reply of National Labor Relations Board to motion of International Typographical Union (AFL–CIO) for leave to intervene, or, in the alternative to appear as amicus curiae

Filed May 11, 1959.

The National Labor Relations Board, petitioner herein, agrees that the International Typographical Union (AFL–CIO), which was permitted to intervene in the Board proceeding as a Party in Interest, should be permitted to appear herein as amicus curiae to represent its interests. As the ITU was not a party-respondent, or party to the contract, before the Board, we do not understand why it should be accorded intervenor status in this proceeding.

The Board therefore suggests that the Court grant the ITU's motion only insofar as it seeks leave to appear as amicus curiae.

(S) Marcel Mallet-Prevost,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this 28th day of April 1959.

829 [File endorsement omitted.]

830 In United States Court of Appeals, Second Circuit

Present: Hon. THOMAS W. SWAN, Hon. CARROLL C. HINCKS, Hon. LEONARD P. MOORE, Circuit Judges.

[Title omitted.]

Order denying motion for leave to intervene and granting leave to International Typographical Union to file brief amicus curiae

May 11, 1959

A motion having been made herein by counsel for the International Typographical Union, AFL–CIO, for leave to intervene or to appear as amicus curiae,

Upon consideration thereof, it is

Ordered that said motion for leave to intervene be and it hereby is denied.

Further ordered that leave to file a brief amicus curiae of 25 pages be and it hereby is granted.

831 [File endorsement omitted.]

832 In United States Court of Appeals for the Second Circuit

Docket No. 25496

[Title omitted.]

Notice of motion for an order adjourning the argument of case, etc.

SIRS: Please take notice that, upon the annexed affidavit and upon all proceedings had herein, the undersigned will move this Court on the 2nd day of November, 1959, in the Federal Court House, Foley Square, City of New York, at 10:30 a.m. or as soon thereafter as counsel may be heard, for an order adjourning the argument of this case, on the Board's petition

for enforcement, from November 10, 1959, to a date in December 1959 to be fixed by the Court.

Respectfully,

SIDNEY SUGERMAN,
Attorney for Respondent,
New York Mailers' Union No. 6.

Dated, New York, N.Y., October 26, 1959.

To:

CLERK OF THE COURT,
Federal Court House,
Foley Square, New York.

STUART ROTHMAN, Esq.,
General Counsel,
Washington, D.C., N.L.R.B., Petitioner.

TOWNLEY, UPDIKE, CARTER & RODGERS, Esqs.,
220 East 42nd Street, New York 17, N.Y.,
Attorneys for Respondent News Syndicate Company, Inc.

833 Certificate of service (omitted in printing).

834 *Affidavit of Sidney Sugerman*

STATE OF NEW YORK,
County of New York, ss:

Sidney Sugerman, being duly sworn, deposes and says:

1. I am attorney for New York Mailers' Union No. 6, Respondent and movant herein.

2. According to notice received from the Clerk of the Court on October 21 last, this case has been placed on the day calendar for argument November 10, 1959. It is to be argued in behalf of said Respondent by Gerhard P. Van Arkel, Esq., of Washington, D.C.; in behalf of Respondent News Syndicate, Inc. by J. Howard Carter, Esq.; and in behalf of petitioning Board by a member of its General Counsel's staff in Washington.

3. With earnest regard for the efforts of the Court to solve the difficult calendar problems besetting both bench and bar, we reluctantly move the Court, out of an overwhelming necessity, for an adjournment of the argument from November 10,

1959, to any date in early December 1959 to be fixed by the Court. The General Counsel's office, in conversations
835 on October 23, stated that it was unopposed to such an adjournment. It will be requested to sign and submit a stipulation to that effect.

4. Mr. Carter, as trial counsel for the firm of Townley, Updike, Carter and Rodgers, Esqs., has authorized and requested me to inform the Court that he is now and will continuously be engaged in actual day-to-day trials of cases now set and held for various dates throughout the month of November. Apart from the resulting conflict of engagements which this situation presents for him, Mr. Carter requires the additional time, not now available to him, to re-examine the voluminous record and to prepare for the argument of the important issues involved in this case which vitally affects the entire newspaper publishing industry in the City of New York.

5. Mr. Van Arkel, as out-of-town counsel, is likewise heavily engaged but, in particular, is firmly scheduled, as general counsel of International Typographical Union, to be in Indianapolis on November 10, 1959, to meet with an assembly, already called, of that Union's representatives from all over the country and to counsel them on critical matters in the operation of the new so-called Labor Reform Law which, in most respects, will go into effect on November 13, 1959.

SIDNEY SUGERMAN.

Sworn to before me this 26th day of October 1959.

CHARLES W. SILVER,
Notary Public, State of New York.
No. 03–3667185, Qualified in Bronx County.
Commission expires March 30, 1961.

836 In United States Court of Appeals for the Second Circuit

Stipulation refixing of date of argument

October 27, 1959

The undersigned hereby stipulate that the Court may grant the motion of New York Mailers' Union No. 6, Respondent

for an adjournment of the argument scheduled for November 10, 1959, on the Board's pending petition for enforcement, and may fix any date in December 1959 for such argument.

OCTOBER 26, 1959.

SIDNEY SUGERMAN,
Attorney for Respondent,
New York Mailers' Union No. 6.

OCTOBER 1959.

_____,
Attorneys for Respondent,
News Syndicate Company, Inc.

OCTOBER 27, 1959.

MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

837 *Order granting adjournment of date of argument*

October 28, 1959

It is ordered that the argument of the appeal be and it hereby is adjourned to month of December.

Dated: 28 Oct. 1959.

JEDWARE LUMBARD,
USCJ.

[File endorsement omitted.]

838 In United States Court of Appeals for the Second Circuit

Docket No. 25496

Calendar No. 45

[Title omitted.]

Notice of motion for an order adjourning the date of argument of case, etc.

SIRS: Please take notice that, upon the annexed affidavit and upon all proceedings had herein, the undersigned will move this Court on the 23rd day of November, 1959, in the

Federal Court House, Foley Square, City of New York, at 10: 30 a.m. or as soon thereafter as counsel may be heard, for an order further adjourning the argument of this case, on the Board's petition for enforcement, from December, 1959, to a day certain in January, 1960, to be fixed by the Court.

Respectfully,

SIDNEY SUGERMAN,
Attorney for Respondent,
New York Mailers' Union No. 6.

Dated, New York, N.Y., November 17, 1959.

To:

CLERK OF THE COURT,
Federal Court House, Foley Square, New York.

STUART ROTHMAN,
General Counsel,
By Melvin Pollack, Esq., Washington, D.C.,
N.L.R.B., Petitioner.

TOWNLEY, UPDIKE, CARTER & RODGER, Esqs.,
220 East 42nd Street, New York 17, N.Y.,
Attorneys for Respondent News Syndicate Company, Inc.

839 Certificate of service (omitted in printing).

840 *Affidavit of Sidney Sugerman*

STATE OF NEW YORK,
County of New York, ss:

Sidney Sugerman, being duly sworn, deposes and says:

1. I am attorney for New York Mailers' Union No. 6, Respondent and movant herein.

2. Upon application of this respondent, the Court, by notice dated October 29, 1959, adjourned the argument of this case from November 10, 1959 to December. The case has not as yet been placed on the day calendar for argument in the latter month. It is to be argued in behalf of petitioner by Melvin Pollack, Esq., of the General Counsel's staff in Washington, D.C.; in behalf of respondent Mailers' Union by Gerhard P. Van Arkel, Esq., also of Washington, D.C.; and in behalf of respondent News Syndicate, Inc. by J. Howard Carter, Esq.

3. I was informed by telephone this morning by Mr. Van Arkel's office that the General Counsel and he had been unaware, at the time of the last application for adjourn-
841 ment, that this Court would be sitting on appeals in December only during the first two weeks of that month. In that period Mr. Pollack of the National Labor Relations Board's General Counsel's office, is scheduled to argue four cases in Boston, Philadelphia, and St. Louis. Mr. Van Arkel will be engaged in argument with him in the Boston case.

4. In view of Mr. Pollack's heavy assignments for these two weeks, the General Counsel and Mr. Van Arkel request, with the consent given to me by Mr. J. Howard Carter this morning over the telephone, and I hereby respectfully apply for a further adjournment of the argument of this case from December, 1959, to any day certain in January, 1960, preferably after the first week in that month, and not on a Monday.

SIDNEY SUGERMAN.

Sworn to before me this 17th day of November 1959.

CHARLES W. SILVER,
Notary Public, State of New York.
No. 03–3667185. Qualified in Bronx County.
Commission expires March 30, 1961.

842 *Order granting adjournment of date of argument*

November 25, 1959

It is ordered that the argument of the appeal be and it hereby is adjourned to a date to be set by the clerk.

Dated: Nov. 25, 1959.

CHARLES E. CLARK,
USCJ.

N.L.R.B. v. News Syndicate Co., Cal. No. 45, Docket 25496.
[File endorsement omitted.]

843 In United States Court of Appeals for the Second Circuit

No. 45—October Term, 1959

Argued January 12, 1960

Docket No. 25496

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, RESPONDENTS

Before: CLARK, HINCKS and WATERMAN, Circuit Judges

On petition of National Labor Relations Board for enforcement, its order, 122 NLRB No. 92, is set aside and the case remanded.

Melvin Pollack, Atty., National Labor Relations Board, Washington, D.C. (Jerome D. Fenton, Gen. Counsel, Thomas J. McDermott, Assoc. Gen. Counsel, and Marcel Mallet-Prevost, Asst. Gen. Counsel, N.L.R.B., Washington, D.C., on the brief), for Petitioner.

844 J. Howard Carter, New York, N.Y. (Townley, Updike, Carter & Rodgers, and Andrew L. Hughes, New York, N.Y., on the brief), for Respondent News Syndicate Co., Inc.

Gerhard P. Van Arkel, of Van Arkel & Kaiser, Washington, D.C. (Sidney Sugerman, New York, N.Y., George Kaufmann, of Van Arkel & Kaiser, Washington, D.C., on the brief), for Respondent New York Mailers' Union No. 6.

Gerhard P. Van Arkel, of Van Arkel & Kaiser, Washington, D.C. (David L. Shapiro, of Dickstein, Shapiro & Calligan, and George Kaufmann, of Van Arkel & Kaiser, Washington, D.C., on the brief), for International Typographical Union, AFL-CIO, Amicus Curiae.

Opinion

May 20 1960

HINCKS, Circuit Judge:

The National Labor Relations Board petitions for enforcement of its order [1] which issued as a result of charges filed by a mail room employee of each of two New York newspapers, the New York Daily News, published by News Syndicate Company, Inc., herein called the News, and the Wall Street Journal, published by Dow Jones and Company, Inc., herein called the Journal. The charges were brought [2] only against the News and against New York Mailers Union No. 6, International Typographical Union, AFL-CIO, herein called the Union, with whom, both in 1954 and 1956, the News and the Journal had executed two-year collective bargaining agreements covering their mail room employees.[3] The Board held that these
845 contracts,[4] when read in conjunction with their references to the General Laws of the International Typographical Union, herein called the General Laws, constituted per se violations of Section 8(b)(1)(A) and (2), and Section 8(a)(1) and (3) of the National Labor Relations Act of 1947, 29 U.S.C.A. § 151 et seq., by the Union and the News, respectively.

The Board also found that the respondents had, in fact, maintained and enforced unlawful Union security and preferential hiring practices at the News and Journal mail rooms, as a result of which the two complaining employees, Burton Randall, at the News, and Julius Arrigale, at the Journal, were unlawfully discriminated against in their employment. Numerous remedies were ordered, which, however, in view of our conclusions on other dispositive issues, we need not discuss.

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[1] The Board's decision and order (which were issued on January 2, 1959; corrected on January 21, 1959; and amended on March 2, 1959) are reported at 122 NLRB 818.

[2] Since no charges were filed against the Journal, the Board made no unfair labor practice findings with respect to it.

[3] All New York City newspaper publishers subscribed to the 1954 and 1956 contracts, herein attacked as unlawful, and which are more fully described below.

[4] The two contracts involved herein are identical in their pertinent provisions and they shall, hereafter, be referred to in the singular.

We will first deal with those contractual provisions held to be per se violative of the Act. The contract contains nothing which on its face could be said to be violative of the Act. The General Counsel so conceded at the hearing and the Board does not contend otherwise. Rather, it here advances the same argument which was recently rejected by the District of Columbia Circuit. Honolulu Star Bulletin v. N.L.R.B., 274 F. 2d 567. Because of our substantial agreement with the penetrating and sound conclusion of that court, we shall have less to say on this aspect of the instant controversy than if the argument had not already had such authoritative judicial consideration.

The Board's position now is that, notwithstanding the seemingly legal contractual provisions which limit mail room employment to "journeymen and apprentices," who are defined quite innocuously in Section 20–b of the contract and
846 without reference to Union membership,[5] see Evans v. International Typographical Union, D.C. Ind., 81 F. Supp. 675, 686, the contract is illegal because of a clause therein which incorporates those General Laws of the International Union which are "not in conflict with this contract or with

[5] Excerpt from Section 20–b:

"* * * Only journeymen and apprentices shall be employed on work covered by this agreement. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided elsewhere in this agreement. Journeymen are defined as: (1) Persons who prior to the effective date hereof worked as such in the mailing rooms of papers signatory to this contract; (2) persons who have completed apprentice training as provided in this contract, or have passed a qualifying examination under procedures heretofore recognized by the Union and the Publishers; (3) persons who have passed an examination recognized by both parties to this contract and have qualified as journeymen in accordance therewith. Persons seeking to qualify as journeymen shall be given an examination under nondiscriminatory standards and procedures established by the parties hereto by impartial examiners qualified to judge journeyman competency selected by the parties hereto. In the event agreement cannot be reached on the standards or procedures to be followed, or the examiners to conduct such examinations, the dispute shall be submitted to the Joint Standing Committee whose decision shall be final and binding on the parties."

The General Counsel commented at trial that "My reading of the contract did not indicate that there was any violation with respect to the method by which a person could become a journeyman, at least from the face of the contract. That appeared to be valid as set out in Section 20(b) of the contract."

federal or state law" to "govern relations between the parties on conditions not specifically enumerated herein." [6]

847 Certain of these General Laws concededly condition journeyman and apprentice status on Union membership and they further require each local Union to establish Union employment priority and seniority systems covering its members.[7] Such conditions, the Board held, unlaw-

848 fully created discriminatory and coercive conditions. It also held illegal the contractual provisions vesting hiring authority in the mail room foremen, who were required to be Union members in good standing, since, reasoned the Board, such foremen would have to follow, both under the

[6] Section 24 of the contract reads:

"Both parties agree that their respective rights and obligations under this contract will have been accorded by the performance and fulfillment of the terms and conditions thereof and that the complete obligation of each to the other is expressed herein. It is understood and agreed that the General Laws of the International Typographical Union in effect January 1, 1955, not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein."

Section 38 provides:

"Mutual Guarantees. Because of the enactment of the Labor-Management Relations Act of 1947 this contract differs from contracts between these parties over a period of many years. It is understood and agreed, however, for the duration of this contract, that if any provision modified from any preceding contract or excluded from this contract solely because of the restrictions of law, no longer is held to be inoperative, either by legislative enactment or by decision of the court of highest recourse, then such provision automatically shall become a part of this contract, to the extent permitted, and be in force and effect as though it had been originally made a part hereof."

The respondents assert without challenge that no union security clause has appeared in a collective bargaining agreement between the parties since 1948.

[7] Extracts from General Laws:

"ARTICLE V—FOREMEN

"Section 11: All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft and entitled to all the privileges and benefits of membership.

"ARTICLE VII—MACHINES

"Section 1: • • • None but members [of the ITU] shall be permitted to operate, maintain and service any mailing machinery or equipment when

terms of the contract and under their Union oath,[8] the closed-shop and priority and seniority system provisions of the General Laws. Finally, on the basis of the foremen's hiring authority under the contract and their Union obligations, the Board concluded that, regardless of the unlawful provisions of the General Laws, the News had unlawfully delegated exclusive mail room hiring to the Union, in a fashion incompatible with the expressed standards required by the Board.

Mountain Pacific Chapter of the Associated General
849 Contractors, 119 NLRB 883, 893, 897, enforcement denied, N.L.R.B. v. Mountain Pacific Chapter of Assoc. Gen. Con., 9 Cir., 270 F. 2d 425.

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used on work under the jurisdiction of the International Typographical Union. * * *

"Section 2: In machine offices under the jurisdiction of the International Typographical Union, no person shall be eligible as a 'learner' on machines who is not a member of the International Typographical Union. * * *

"ARTICLE X—PRIORITY

"Section 2: Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

"Section 5: Any member engaged to serve the International Typographical Union, a subordinate union or to perform work in the interest of the organized labor movemet, or any member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the priority substitute competent to perform the work if one is available. The situation holder shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority sub, and considered in the category of a new situation. Upon reporting for duty full priority rights shall be restored.

"Section 6: Available priority substitute competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I.T.U. laws or contracts: Provided, Should a substitute with greater priority become available such substitute shall be placed on said situation: Provided, further, Local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to, but not more than ninety days from absence of situation holder."

[8] The Board points to various provisions in the General Laws and local Union constitution, by-laws and rules which require all Union members

The respondents[9] raise several serious objections to the Board's conclusion that the contract was illegal on its face. But we find it necessary to go no further than to overrule the Board's holding on the reasoning and on the ground developed in Honolulu Star Bulletin v. N.L.R.B., supra. See also Lewis v. Quality Coal Corp., 7 Cir., 270 F. 2d 140. The facts of the case here fall directly within the scope of the Honolulu Star case: the contract here contained no explicit illegal Union security clause and did not purport to incorporate illegal provisions of the General Laws, but only those which were "not in conflict * * * with federal or state law * * *."[10] In this respect the contract is distinguishable from those involved in Red Star Express Lines v. N.L.R.B., 2 Cir., 196 Fed. 2d 78, and other cases relied on by the Board, such as N.L.R.B. v. Gottfried Baking Co., 2 Cir., 210 F. 2d 772, and N.L.R.B. v. Gaynor News Co., 2 Cir., 197 F. 2d 719, affirmed 347 U.S. 17. In such cases, hypothetical language in collective bargaining agreements as to the effect of illegal union security provisions which were explicitly included therein was thought to be insufficient to negate their illegal coercive force.
850 The cases make it plain that in scanning a contract for its possible coercive effect on employees the test is whether the natural and foreseeable consequence of the lan-

to comply with all General Laws and local Union laws. These laws in turn provide for closed-shop and preferential hiring conditions. The Union points to both a 1951 amendment of the General Laws which abolished an oath provision requiring discrimination against nonmembers and a 1953 amendment to the ITU's Constitution which abolished a prior provision requiring all members to accord preference to other members.

[9] In addition to the respondents, the International Typographical Union, AFL-CIO, has filed a brief in opposition to the Board's petition, pursuant to this Court's permission.

[10] While in the contract before us the term "journeyman and apprentice" is not explicitly defined to exclude nonunion employees, the contract did not, as in the Honolulu case, specifically provide that the term "journeyman and apprentice," was in no way to be interpreted as applying exclusively to Union members. However, we do not read the Honolulu opinion as turning primarily upon that provision. Its real thrust was its rejection of the same incorporation by reference argument here urged. Indeed, in an earlier case before the Board, a trial examiner found similar contractual provisions valid and he rejected the "incorporation by reference theory" here advanced. The Board, at that time, did not object to his ruling. Matter of Kansas City Star Co., 119 NLRB 972.

guage adopted is to encourage union membership. Cf. Radio Officers Union v. N.L.R.B., 347 U.S. 17, 52. We hold this is not such a contract.

The Board also held that the contract, by its reference to the General Laws, delegated complete control over seniority matters to the Union, and hence tended to encourage Union membership in violation of the Act. In so ruling, the Board relied upon Matter of Pacific Intermountain Express Co., 107 NLRB 837, enforced as modified, N.L.R.B. v. International Brotherhood of Teamsters, 8 Cir., 225 F. 2d 343; see also N.L.R.B. v. Dallas General Drivers, Etc., 5 Cir., 228 F. 2d 702.

As to this we think there is a fatal defect in the Board's minor premise, viz., that unrestricted hiring and seniority control was, under the contract, delegated to the Union. Initially, we note that the contract itself does not purport to make such a delegation: on the contrary, it deals specifically with many crucial problems of employee priority and seniority. Thus, under Section 20–a of the contract, the foreman is given hiring authority, but the order of hiring priority and seniority is clearly spelled out with respect to decreasing and in-
851 creasing the work force.[11] Furthermore, under Section 22 the seniority status of employees who are on leave of absence for military and Union reasons is also expressed

[11] Section 20–a of the contract reads:

"The operation, authority, and control of each mail room shall be vested exclusively in the office through its representative, the Foreman. In the absence of the Foreman, the Foreman-in-Charge shall so function. Foremen of Mail Rooms have the right to employ help and may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, which shall be kept conspicuously posted, and which shall in no way abridge the civil rights of employees or their rights under accepted International Typographical Union laws, and (4) to decrease the force, such decrease to be accomplished by discharging first the person or persons last employed, either as regular employees or as extra employees, as the exigencies of the matter may require. Should there be an increase in the force, the persons displaced through such cause shall be re-employed in reverse order in which they were discharged before other help may be employed. Upon demand, the Foreman shall give the reason for discharge in writing. The substitute oldest in continuous service shall have prior right in the filling of the first vacancy."

Section 20–b reads;

"The Foreman shall do all the hiring and discharging of all employees engaged in working in the various mail rooms. The Foreman shall have sole authority to issue orders, but he may designate other members to act

in the contract.[12] We are, therefore, hard pressed to discover language indicative of a contractual intent to delegate authority to the Union to determine the seniority of even its own members, since it would appear that any General Laws dealing with seniority matters would be "in conflict with this 852 contract," and would not concern "relations between the parties on conditions not specifically enumerated herein." [13] Moreover, under Section 33 seniority controversies, at least those arising out of the contractual provisions, were subject to the contractual arbitration machinery and were not under exclusive Union control.[14]

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as Assistant Foremen to direct the work, and all employees shall comply with all such orders issued within the terms of this agreement. Failure to comply shall constitute grounds for discharge."

[12] "Section 22–a. Union Activity. When any members of New York Mailers' Union No. 6 are on leave of absence from their jobs because of holding office in New York Mailers' Union No. 6, or the International Typographical Union, or performing any service for these Unions, such members shall be returned to their former or similar positions on the expiration of their leave. The Union shall certify to such absence to the Foreman in writing.

"Section 22–b. In cases where employees are admitted as residents of the Union Printers' Home, or who enlist in or are drafted for service in the military or naval services of the United States or the Dominion of Canada (or their allies) in time of war or for the duration of any period of national emergency proclaimed by the governments of said countries or during the time when such armed forces are engaged in active combat with the military forces of another nation which presents a threat to the security of the United States or Canada, or those who may actively engage in war work for the American Red Cross, or other similar accredited agencies, their situations and/or priority standing shall be protected and upon again reporting for duty the situations and/or priority standing formerly held by these employees shall be restored to them."

[13] See fn. 6, supra.

[14] Section 33–b provides:

"To the Joint Standing Committee shall be referred for settlement all questions which may arise as to the scale of wages, all disputes (except discharge cases) arising out of the operation of this agreement, all disputes regarding the interpretation of any portion of this agreement and any and all disputes (except discharge cases) arising out of, relating to, or affecting the operation of this contract. The Joint Standing Committee must meet within five (5) days from the date on which either party hereto, through its authorized representative, notifies the other party in writing that a meeting is desired and shall proceed forthwith to settle any questions before it. Such decision to be final and binding on both parties to this contract."

Section 33–a provides that the Joint Standing Committee shall be com-

Even if we were to assume that the contract incorporates those General Laws which provide that local Unions shall maintain priority and seniority lists of their members,[15] we could not accept the Board's conclusion that the parties had thereby delegated exclusive control over seniority matters to the Union. The contract expressly provides that "all disputes arising out of, relating to, or affecting the operation of this contract" are subject to arbitration, and surely seniority disputes would be included therein. The Board's contrary view, which is based upon the fact that the General Laws were not subject to arbitration, is not persuasive, since it would be the local seniority lists rather than the General Laws which
853 would be arbitrated. Finally, the uncontradicted testimony of the Union's president that all controversies dealing with priority and seniority were subject to, and had, in fact, gone to arbitration, indicates that the parties interpreted the contract in conformity with the natural meaning we assign to it.

Our holding that the contract did not provide for a closed-shop largely undermines the foundation for the Board's contention that the contractual provision giving Union foremen hiring authority was, per se, an unlawful attempt to maintain closed-shop and Union-controlled hiring practices. The foremen, under the contract at least, were not subject to the conflicting obligations of two masters. Regardless of the Union obligations to which, without more,[16] a foreman would be subject by reason of his Union membership, Section 20–c of the contract specifically provides that: "The Union shall not discipline the foreman for carrying out the instructions of the publisher or his representative in accordance with this agreement." Furthermore, Section 4 provides: "* * * Foremen * * * shall be appointed and may be removed by the Publishers." By these provisions the parties clearly indicated that

posed of four members; two members to be named by the Publisher, and two members by the Union.

Section 33–c provides for a Board of Arbitration, in case of a deadlock in the Joint Standing Committee, said Board to be composed of the Committee and a fifth, disinterested party.

[15] See fn. 7, supra.

[16] See fn. 8, supra.

the foremen are solely the employers' agents and that they are under an obligation to act in accordance with the agreement, in spite of Union ties and obligations which otherwise might control. See Evening Star Newspaper Co. v. Columbia Typographical Union, 141 F. Supp. 374, aff'd D.C. Cir. 233 F. 2d 697; cf. Evans v. International Typographical Union, supra, at 683–684. In any event, there is no presumption of law, we hold, that under the terms of this contract a foreman would be guided by his Union obligations rather than those expressed in the collective bargaining agreement between his employer and the Union. Honolulu Star Bulletin v. N.L.R.B., 854 supra; Carpenters District Council, Etc. v. N.L.R.B., D.C. Cir., 274 F. 2d 564

Of course, few would doubt that in practice Union foremen could discriminate against nonunion applicants in the exercise of their hiring power. But a mere power to discriminate is not illegal as even the Board appears to recognize. See Evans v. International Typographical Union, supra, at 684–685; cf. Chicago Rawhide Mfg. Co. v. N.L.R.B., 7 Cir., 221 F. 2d 165, 170; Coppus Engineering Corp. v. N.L.R.B., 1 Cir. 240 F. 2d 564, 572, 574. I[illegible]d, such recognition is implicit in the Board's order which prohibits the News and the Union from requiring mail room foremen to be Union members only until such foremen are directly advised by the Union that they can disregard those provisions of the General Laws which call for closed-shop conditions and preferential Union hiring. In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives. N.L.R.B. v. Mountain Pacific Chapter of Assoc. Gen. Con., supra, at 431, cf. N.L.R.B. v. Revere Metal Art Co., Inc., etc., 2 Cir., May 6, 1959. —— F. 2d ——.

Nor can we sustain the Board's finding that irrespective of the closed-shop provisions of the General Laws and the foreman's obligation to follow them, his hiring authority, in fact, vested the Union with exclusive control over hiring. The Board's so-called Mountain Pacific doctrine even if sound is

not applicable here.[17] For the News, not unlike numerous other employers, merely placed its hiring powers in the
855 hands of its principal employee, the foreman who discharged that responsibility on the employer's premises. The News, like any other employer, is of course entitled to employ only Union foremen, if it so desires. Sections 2 (3) & (11), 14(a) of the Act, 29 U.S.C. §§ 152 (3) & (11), 164(a); Carpenters District Council, Etc. v. N.L.R.B., supra; cf. A. H. Bull Steamship Co. v. National Marine Engineers Beneficial Ass'n, 2 Cir., 250 F. 2d 332. But, as we have already noted, the foreman's prime allegiance and responsibility was owed to his employer and to the terms of the collective bargaining agreement. We are unable to discover any reasonable ground of support for the conclusion that these hiring conditions would lead an employee to legitimately assume, regardless of the actual operations of the arrangement, that his employment opportunities depended upon his Union membership.

We conclude, accordingly, that the parties did not violate the Act by the mere execution and maintenance of the collective bargaining contract.[18]

The Board also found that quite apart from the supposed illegality of the contract the respondents had in practice maintained and enforced closed-shop and preferential hiring conditions at the News and Journal through their apprenticeship and competency systems, which we will presently describe. The essence of its position is that respondents maintained a system whereby only Union members could obtain permanent mail room employment, and whereby such members were favored over nonmembers in the "shape-up" hiring for other jobs.

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[17] N.L.R.B. v. Mountain Pacific Chapter of Assoc. Gen. Con., supra; N.L.R.B. v. Swinerton & Walberg Co., 9 Cir., 202 F. 2d 511, cert. denied 346 U.S. 814; N.L.R.B. v. International Association of Heat and Frost Insulators, etc., 1 Cir., 261 F. 2d 347; Bichleay Corp. v. N.L.R.B., 3 Cir., 206 F. 2d 709; cf. Morrison-Knudsen Company, Inc., etc., v. N.L.R.B., 2 Cir., March 2, 1960, —— F. 2d ——.

[18] Because of our holding herein, we need not pass upon the Union's claim that the Board's concession that the respondents entered into and administered the contract in good faith precludes findings of violations of §§ 8(a)(3) and 8(b)(2). As to this, each side invoked Radio Officers Union v. N.L.R.B., 347 U.S. 17.

The employment practices thus impugned were substantially as follows. Full-time employees, known as "regular situation holders," form the bulk of the mail room labor
856 force and they are not required to "shape" for work, i.e., to be hired on a day-to-day basis. The record indicates, without apparent exception, that such employees are all both journeymen and Union members, although, for aught that appears, their Union membership antedated the passage of the Taft-Hartley Act. The foreman frequently exercises his hiring authority in order to both provide replacements for absent regular situation holders and increase the labor force when increases are needed. The first group to which he turns is that composed of men termed "regular substitutes." These men are available daily to supplement the regular work force of any single publisher and although they are not guaranteed five work shifts per week they normally work that often. It appears that each of them is also both a journeyman and a Union member. The Union "chapel" chairman,[19] maintains a priority list of these regular substitutes, whose priority is determined by the date on which they commence work with a particular employer, and that date is indicated by the deposit of their Union card with the chapel chairman. Regular substitutes are hired by the foreman in the order in which their names appear on this list.

If, as is quite often the case, the size of the day's newspaper requires the employment of additional mailers, the foreman next hires from men who shape the shop "regular situation holders" and "regular substitutes" from other newspapers, in preference to "other extra." The Board describes such "other extras" as "non union shapers" and the Union terms them "casuals without journeyman status." These conflicting descriptions point up the nub of the dispute. The record indicates that many of these "other extras," including the two whose complaints initiated these proceedings, are men
857 engaged in full-time occupations outside the newspaper industry who shape either irregularly or regularly, but at infrequent intervals throughout the week. Thus

[19] The "chapel" chairman is equivalent to a shop steward and each publisher's mail room constitutes a "chapel."

ostensibly, at least, the hiring procedures are based upon nondiscriminatory contractual criteria, i.e., competency as evidenced by journeyman status, and seniority based upon length of employment as a journeyman with the hiring employer and as a journeyman elsewhere in the industry.[20] And the respondents persuasively contend that thus to accord priority in the hire of extras to men who regularly work for the employer as well as to men who have journeyman status with other employers, is entirely consistent with lawful hiring based upon competency and legitimate employee qualifications quite apart from Union membership.

The Board, on the other hand, strongly urges that since outside Union men are always given shaping preference, even if they have never previously worked at the particular hiring shop, as against all nonunion shapers, including those who have shaped at that shop for many years, unlawful discrimination is proved. It insists that the apprenticeship and competency systems are nothing but camouflage to conceal and perpetuate accomplished discrimination. We turn, therefore, to a consideration of these systems.

Two routes were open to a mail room employee who desired to achieve journeyman status—he could either complete an apprentice training program or he could pass a competency examination. While it is true that apprentices were hired by the foremen,[21] as we said above the contract did not
858 place the hiring authority in the Union. Nor does the record indicate any discriminatory practices in the actual hiring of apprentices.[22] Section 20–b of the contract pro-

[20] However, the order of hire among regular situation holders and regular substitutes from other papers was first that of men who had not had five days' work that week and next that of men who had already worked five days.

[21] We note, however, that while under Section 20–b of the contract the foreman was to hire and discharge all employees, still Section 27–b provided that a Joint Apprenticeship Committee, composed of an equal number of Union and employer representatives, was to have jurisdiction over all provisions affecting apprentices and was to have control over and responsibility for the selection of apprentices.

[22] The record shows that the Union has occasionally requested and received employer permission to shorten the prescribed six-year apprenticeship program. This permission was allegedly given on several occasions when an employer needed additional journeymen. In any event, all apprentices were

vided that the qualifying examination for prospective journeymen was to be given "by impartial examiners qualified to judge journeyman competence selected by the parties hereto." [23] The examinations were given, in fact, by a committee composed of Union officials and mail room foremen. The only concrete evidence of the manner in which this testing system operated is the incident which led to the filing of charges by Burton Randall, a nonunion extra at the News.

In the spring of 1956 the News, along with other New York City newspaper publishers, concurred in a Union-initiated plan which contemplated the promotion to "regular substitute" status of those extras (none of whom were apprentices) who had earned 15 vacation credits in 1954 and 1955. Such a vacation credit standing indicated that a man had averaged almost three days' work per week. The Union hoped that its members might perform the increased volume of mail room work which had become available in the New York mail rooms. The News accepted the plan and the proposed objective standard of 15 days' vacation credits, allegedly because it recognized the need for additional "regular substitutes." It reasoned
859 that the prospective selectees, who had demonstrated frequency of employment over a considerable period of time, would add the greatest available regularity, dependability and competency to the regular work force. Approximately sixty nonunion men shaped at the News. Of these thirty-one met the proposed standard and were made regular substitutes after they had each passed the journeyman's competency examination. Thereafter, each of the new regular substitutes was hired prior to Randall, although he had shaped at the News for over ten years, which was longer than thirty of them. Randall's full-time outside occupation prevented him from shaping except on Friday and Saturday evenings but his work on these nights while regular was insufficient to give him the 15 days' vacation credit.

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required to pass the same competency examination as other applicants for journeyman's status, and under Section 27-b of the contract (see fn. 21, supra) any question affecting apprentices upon which the Joint Apprenticeship Committee could not agree was subject to arbitration.

[23] See fn. 5, supra.

The Board found that as a result of these practices Randall, who continued to shape regularly on Friday and Saturday evenings, worked later hours, performed more difficult work, and lost overtime pay. It also found that Randall was denied employment on one Sunday evening, as a result of a Union reprisal against him for his filing of unfair labor practice charges.

We find, however, a dearth of evidence either that a Union journeyman has ever been hired in preference (let alone, an unlawful preference) to a nonunion journeyman,[24] or that the qualifying standards for taking a competency examination are discriminatory. The record is barren of even the slightest hint that there has been discrimination in the conduct of the examinations.[25] Availability, dependability and regularity of service, as well as mere competency, are valid nondiscriminatory considerations in determining the order of hire. The fact that one applicant is as competent as another, does not mean that the other may not properly be preferred on

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[24] Record statements by Union foremen that they would always hire "outside union men" in preference to "non-union extras" do not demonstrate discriminatory hiring practice in the absence of evidence that they or the Union ever committed, in fact, any discriminatory act in denying employment to a non-union journeyman. For aught that appears, these were mere predictions of what they would do if the situation ever arose. Local 553, International Brotherhood of Teamsters v. N.L.R.B., 2 Cir., 266 F. 2d 532. Furthermore, on the issue of the motivation behind the hiring plan of extras, this testimony, in context, is of scant help, because (1) the expression "outside union men" is continually interchanged with that of "competency" and "journeyman," and (2) due to the lack of nonunion journeymen practically all journeymen were Union members. What is even more important, no "nonunion extras" were journeymen and all "outside union men" were journeymen.

[25] The only offered evidence as to the fate which would await a nonunion man claiming competency who made application for employment as a journeyman, was Union testimony, here unchallenged, concerning past practices under a substantially identical contract between the Printers' Union, New York Typographical Union, No. 6, and the Publishers Association of New York City. Over fifty nonunion journeymen, claiming competency, were allegedly given the identical competency examination as that given apprentices, and while only twenty-six passed, none of those who failed complained of discrimination. Interestingly enough, all of the successful twenty-six applicants went to work prior to their admission into the Union, and while the Union application of one was rejected he remains at work in the trade. See also Evans v. International Typographical Union, supra, at 686–687.

the basis of his other qualifications. And the fact that those achieving status as new "regular substitutes" subsequently became Union members and even indicated their willingness to do so prior to the adoption of the standard, does not indicate, at least on this record, that the standard, seemingly fair, was discriminatory in its effect. Randall admitted that he would have welcomed the opportunity to become a Union member; and for aught that appears in the record, so would the remaining extras who did not meet the established standard.

We conclude that the record does not warrant a finding that the hiring system in general, or the competency system in particular, by its discrimination against nonunion applicants, encouraged Union membership.

This conclusion disposes of Arrigale's charge against the Union. For that charge was based only on a claim of un-
861 lawful discrimination inherent in the hiring system.

But Randall also charged, and the Board found, a specific act of discrimination which caused him loss of employment on one Sunday night. Concededly, Randall did not work on the night in question. And we should hesitate to sustain a finding based solely on Randall's contradicted testimony, that the foreman had told him that he had been instructed by the Union president to reduce Randall's standing on the list of casual shapers for that night. But there was more than this in the record. There was direct evidence, not contradicted we think, that Randall had long stood first on the list of casual shapers for Friday and Saturday nights and also on the Sunday night immediately preceding the Sunday night in question when, according to his direct testimony, for the first time several extras were put to work ahead of him. We cannot say that it would be unreasonable to infer that this abrupt change in his position on the list was due to the fact that he had shortly before filed charges against the respondents, especially in the absence of any other satisfactory explanation for the change. On the whole, we think the finding of discrimination causing Randall loss of one night's employment was sufficiently supported in the record and constituted a violation of §§ 8(a)(4) and 8(b)(2).

We hold, therefore, that we must deny enforcement of the Board's order except so much of it as is based on the finding of unlawful discrimination against Randall which we have just sustained. However, since the exception covers so small a portion of the order, in the interest of clarity we will deny the petition for enforcement in toto, and leave it to the Board, if so advised, to enter an order consistent with our opinion. See Honolulu Star Bulletin v. N.L.R.B., supra.

Order set aside and case remanded.

862 In United States Court of Appeals for the Second Circuit

No. 25496

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO, RESPONDENTS

Judgment

Filed June 8, 1960

Before: CLARK, HINCKS and WATERMAN, Circuit Judges

This cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against Respondent Company News Syndicate Company, Inc., its officers, agents, successors, and assigns and Respondent Union New York Mailers' Union No. 6, International Typographical Union, AFL–CIO, its officers, representatives, agents, successors, and assigns on January 2, 1959. The Court heard argument of respective counsel on January 12, 1960, and has considered the briefs and transcript of record filed in this cause. On May 20, 1960, the Court being fully advised in the premises, handed down its decision setting aside the Board's order and remanding the case to the Board.

On consideration whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Second

Circuit that the said order of the National Labor Relations Board directed against Respondent Company, News Syndicate Company, Inc., its officers, agents, successors, and assigns and Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL–CIO, its officers, representatives, agents, successors, and assigns be and it hereby is set aside and remanded to the Board for entry of an order consistent with the Courts opinion.

CHARLES E. CLARK,
Judge, United States Court of Appeals for the Second Circuit.
C. C. HINCKS,
Judge, United States Court of Appeals for the Second Circuit.

863 [File endorsement omitted.]

864 [Clerk's certificate to foregoing transcript omitted in printing.]

865 Supreme Court of the United States

No. 339, October Term, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., ET AL.

Order allowing certiorari

November 7, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is transferred to the summary calendar and set for argument immediately following No. 68.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1960

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No. 220

In the Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit entered on May 20, 1960, denying enforcement of an order issued by the Board against respondents.

OPINIONS BELOW

The opinion of the court of appeals (App. 22–42),[1] is not yet officially reported. The findings of fact, conclusions of law, and order of the Board (R. 635–695, 703–728, 751–760) are reported at 122 NLRB 818.

[1] "App." refers to the appendix to this brief; "R." to the Joint Appendix filed in the court of appeals.

JURISDICTION

The opinion of the court of appeals was filed on May 20, 1960 (App. 22–42) and its decree was entered on June 8, 1960 (App. 42–43). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 146, 29 U.S.C. 160(e)).

QUESTIONS PRESENTED

The principal question presented is whether the Board may properly conclude that a collective bargaining agreement which purports to incorporate union working rules "not in conflict with * * * federal or state law," but does not particularize what rules are excluded as illegal, encourages union membership in violation of the National Labor Relations Act, in that employees would tend to view the contract as including the rules requiring union membership as a condition of employment.[2]

[2] In addition, the following subsidiary questions are presented:

(*a*). Whether the Board properly concluded that the contract also incorporated union working rules establishing a priority and seniority system among union members, and thus unlawfully delegated to the union control over employment priority and seniority.

(*b*). Whether the Board properly concluded that contract provisions vesting exclusive control over employment in union foremen, who were bound by membership obligations to follow union rules requiring employees to be union members, were unlawful in that they further manifested an agreement to operate under closed-shop conditions, and improperly delegated exclusive control over hiring to the union.

These questions are so directly related to, and intertwined with, the principal question that, if the Board's position in re-

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> SEC. 8(a). It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained,

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spect to the latter should be sustained, it would be appropriate for these subsidiary questions also to be reviewed. In order to preserve the Board's position in regard to these issues, they are specifically presented herein.

or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * * *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his fail-

ure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership * * *

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. *The contract and by-laws provisions.* Respondent Union, affiliated with the International Typographical Union, represents employees in the mail rooms of all New York City newspaper publishers. In December 1954, and again in 1956, respondent News Syndicate Company, Inc. (hereinafter called the News), publisher of the New York Daily News, signed collective bargaining contracts negotiated by the Publishers' Association of New York City and the Union. The publisher of the Wall Street Journal (hereinafter called the Journal) signed similar contracts with the Union.[3] Section 24 of the contract provided that the General Laws of the International Typographical Union (herein called the ITU) "not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein" (R. 641-642; 534).

Section 5 of the contract limited mail room employment to "journeymen and apprentices" (R. 529). The ITU General Laws, however, provided that journeymen and apprentices must be ITU members and that each local union must establish a system of em-

[3] All New York City newspaper publishers affiliated with the Association subscribed to the 1954 and 1956 contracts (R. 527).

ployment priority and seniority among union members (R. 641–646; 554–558).[4]

Section 4 of the contract provided that mail room superintendents, foremen, and assistant foremen must

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[4] The relevant provisions of the General Laws are as follows:

ARTICLE V—FOREMEN

Section 11. All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft and entitled to all privileges and benefits of membership.

ARTICLE VII—MACHINES

Section 1. * * * None but members [of the ITU] shall be permitted to operate, maintain and service any mailing machinery or equipment when used on work under the jurisdiction of the International Typographical Union. * * *

Section 2. In machine offices under the jurisdiction of the International Typographical Union, no person shall be eligible as a "learner" on machines who is not a member of the International Typographical Union, * * *

ARTICLE VIII—MACHINE TENDERS AND MACHINISTS

Section 1. All machine tenders and machine tenders and machinists, members engaged in the adjustment, repair, and maintenance of all mechanical devices used in the performance of * * * mailing room work shall be members of the [ITU] * * * All work pertaining to maintenance and care of machines is to be performed exclusively by machine tenders who are journeymen or apprentice members of the [ITU].

ARTICLE X—PRIORITY

Section 2. Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or kept in a place within the chapel accessible to members

be members of the Union, and Sections 20a and 20b vested exclusive control over the mail room employment in the foremen (R. 648–649; 529–530, 532–534). The Union's Constitution and By-Laws imposed on all members the obligation to observe all union rules, including those restricting employment to union members (R. 650–651; 539–546, 554–558).

2. *The hiring practices.* The Board's findings as to the respondents' hiring practices—which, however,

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at all times. The priority standing of a member shall stand as recorded.

Section 5. Any member engaged to serve the International Typographical Union, a subordinate union or to perform work in the interest of the organized labor movement, or any member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the priority substitute competent to perform the work if one is available. The situation holder shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority substitute and considered in the category of a new situation. Upon reporting for duty full priority rights shall be restored.

Section 6. Available priority substitute competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I.T.U. laws or contracts: *Provided*, Should a substitute with greater priority become available such substitute shall be placed on said situation: *Provided, further*, Local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to but not more than ninety calendar days from absence of situation holder.

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were, in large part, set aside by the court of appeals—were as follows:

In practice, the Union foremen at the News and Journal mail rooms hired employees pursuant to a priority system which gave preference in employment to union members (R. 663; 540–546, 557–558). The hiring procedure may be summarized as follows:[5] The foreman initially selected for an evening's work union members whose names appeared on lists furnished by the chapel chairmen or job stewards. The names of fulltime employees, known as "regular situation holders," appeared on one list (R. 664; 14–15, 142, 546–549). The second list contained the names of "regular substitutes"—those who substituted for regular situation holders and were first selected for "extra" work when the size of the paper required the employment of additional mailers (*ibid.*). The foreman hired from these lists in priority order based on the date when the union member had deposited his union card with the chapel chairman (R. 664; 142–143, 171, 261–264). The foreman next hired union members from other papers who "shape the shop," taking first men who had not worked five days that week and then men who had already worked that period (R. 665; 14, 121, 143–144). Finally, if extra help was still needed after the supply of union men had been exhausted, the foreman hired non-union shapers (R. 1230; 15, 122, 144).[6]

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[5] Substantially the same hiring procedure was in effect in the mail rooms of all New York City newspaper publishers (R. 663; 123)

[6] While a seniority list for non-union shapers was not part of the Union's priority system, the foremen at the News and

Nor does it appear that the mail room foremen at the News and Journal ever deviated from this system of employment priority. Thus, while some non-union shapers had worked in the News mail room for over 10 years, performing virtually all operations, the foreman nevertheless required that outside card men, even though they had never before worked at the News, be hired before any non-union shaper (R. 666; 17–19). And, when employees at the News protested against the hiring of unusually large numbers of outside card men, who had shaped on the eve of a holiday for the double pay involved, Superintendent Rottenberg, the Union foreman in charge of the mail room, simply stated that he could do nothing about it because union men had to go to work ahead of the non-union men (R. 667; 93). Similarly, when vacation replacements were needed at the Journal during the summer of 1956, Foreman Every authorized the chapel chairman to get union men from other shops, who were then hired before non-union men who regularly shaped for work, including employee Julius Arrigale (R. 666; 405).

The Union also administered the apprenticeship and competency programs so as to prefer its members. Under the contract, a non-union mail room worker could gain journeyman status, and so qualify for regular employment, only by completing a six-year apprentice training program or by passing a competency test (R. 1291–1292; 533–534). The mail

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Journal maintained such lists based on the first date of employment at their mail rooms (R. 665–666; 144, 162).

room foreman had the exclusive right under the contract to hire apprentices (*ibid.*). He also served under the contract as an "impartial examiner," who, together with the Union's membership committee, administered competency tests to prospective journeymen, who were invariably persons selected by the Union for induction into union membership (R. 1292; 204, 206, 215).

In practice, these programs were operated as follows: When the Union decided that more regular mail room employment was available, it substantially curtailed the prescribed six-year apprenticeship program so that its apprentices could take the competency test (R. 707; 483–484). And, in the spring of 1956, in order to have its members perform the increased amount of work that had become available in the New York City newspaper mail rooms, the Union decided to accept into membership, and give competency tests to, 125 non-union extras (R. 668–669; 123–124, 179–181).[7] The publishers, including the News, did not participate in the decision to enlarge the Union's membership or in arranging the method by which eligibility for membership, and consequently more regular employment, was to be determined. They merely furnished the Union with requested data (R. 669; 124–125).

At the News, the Union selected 31 of 60 employees on Union Foreman Rottenberg's list of the non-union

[7] Insofar as the record shows, no employee selected for induction into the Union ever failed to pass the competency test (R. 707, n. 5).

extras who had received the greatest amount of extra work in 1954 and 1955 (R. 660; 180). Of these, 30 ranked below employee Burton Randall. They were all inducted into union membership on June 10, 1956, were placed on the Union's priority list of regular substitutes, and, from June 15 on, were selected for work before Randall (R. 673–674; 48, 148–149). As a consequence, Randall, who shaped regularly on Friday and Saturday evenings, was required to work later hours, perform more difficult and tedious work, and lost overtime pay (R. 674; 20–23, 56).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that the News violated Section 8(a) (1) and (3), and the Union Section 8(b) (1)(A) and (2) of the Act, by their contract arrangements and by operating an unlawful closed shop and preferential hiring system. In the Board's view, the contract clause purporting to incorporate ITU General Laws "not in conflict with * * * federal or state law," evaluated in light of foreseeable employee reaction, in effect incorporated those portions of the Laws providing for a closed shop and delegating to the Union complete control over employment priority and seniority. Moreover, the Board found that the contract provisions vesting exclusive control over employment in union foremen, who were bound to follow the Union's laws, also evidenced an intent to operate under closed-shop conditions, and delegated exclusive control over hiring to the Union without the requisite safeguards established by the Board in

Mountain Pacific Chapter of the Associated General Contractors, Inc., 119 NLRB 883[*] (R. 646–647, 662–663, 705–709).

As to practice, the Board found that mail room foremen actually hired pursuant to a priority system based upon the laws and constitutions of the ITU and the respondent local union, and that the apprenticeship and competency systems established in the contract were so operated as to give unlawful preference for jobs to union members (R. 672–673, 705–708). In addition, the Board found that two non-union employees, Burton Randall at the News, and Julius Arrigale at the Journal, were discriminatorily denied employment opportunities as a direct result of the unlawful preferential hiring system in effect at the mail rooms of the News and the Journal (R. 675–677, 679–680).

In relevant part, the Board's order (R. 712–719, 728, 752–753) requires the News to cease and desist from its violations of Section 8(a) (1) and (3), and from in any other manner interfering with, restraining, or coercing employees in the exercise of their rights under the Act. Affirmatively, the order requires the News to specify in its current contract with the Union that the provisions of the ITU General Laws found illegal by the Board are not incorporated in the contract, and to indicate which provisions of the Laws are incorporated and operative; to notify mail room employees that they are not bound to follow

[*] The Board's *Mountain Pacific* principle is before the Court in *Local 357, Teamsters* v. *National Labor Relations Board*, certiorari granted, June 27, 1960, No. 64, this Term.

provisions of the Laws which call for a closed shop or union preferential hiring; to reimburse all employees and former employees in the mail room for dues and assessments paid to the Union for a period beginning six months before the date of the filing and service of the charges against it; and to post an appropriate notice.

In parallel terms, but extended to cover all New York City newspaper publishers, the order requires the Union to cease and desist from its correlative violations of Sections 8(b) (1)(A) and (2) of the Act, and to take substantially the same affirmative action as the News.

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals denied enforcement of the Board's order. The court held that the clause in the contract purporting to incorporate only ITU General Laws "not in conflict * * * with federal or state law" must be taken at face value, and hence the contract could not be deemed to include the closed-shop provisions in the Laws. It distinguished its prior decision in *Red Star Express Lines* v. *National Labor Relations Board,* 196 F. 2d 78, on the ground that there is a difference between specifically setting forth illegal union-security provisions in the contract and then purporting in an addendum to suspend any "illegal" clauses (the situation in *Red Star*), and incorporating only the "legal" provisions of union rules some of which are illegal (the situation here). In the court's view, the "natural and foreseeable consequence" of the latter type of provision, unlike that

of the former, would not be to encourage union membership (App., pp. 28–29, *infra*).

The court further found that the contract did not delegate to the Union exclusive control over seniority or hiring, and was not otherwise unlawful. The court also rejected the Board's finding that respondents, in practice, maintained and enforced unlawful closed-shop and preferential employment conditions, and that the apprenticeship and competency systems established in the contract were so operated as to give unlawful preference for jobs to union members. In the court's view of the evidence, the hiring practices were based on valid criteria of competency and dependability and only coincidentally resulted in union members being hired first. Finally, based on these findings as to hiring practice, the court concluded that Randall and Arrigale had not been discriminatorily denied employment opportunities (App., pp. 31–41).*

REASONS FOR GRANTING THE WRIT

1. The decision of the court below, that the coercive force on employees of union rules which condition employment on union membership is dissipated by a provision that those rules are incorporated into a collective bargaining agreement only insofar as "not in conflict with * * * federal or state law," is in ac-

* The court did, however, agree with the Board's finding that employee Burton Randall at the News was denied one night's work because he filed an unfair labor practice charge against respondents. But, since this matter covered "so small a portion" of the Board's order, the court denied the petition for enforcement *in toto* and left it for the Board, "if so advised," to enter an order consistent with the court's opinion (App., pp. 41–42).

cord with *Honolulu Star-Bulletin* v. *National Labor Relations Board*, 274 F. 2d 567 (C.A.D.C.).[10] However, it is in conflict with that of the Court of Appeals for the First Circuit in *International Typographical Union* v. *National Labor Relations Board*, 278 F. 2d 6, decided May 10, 1960. In that case, the court sustained Board findings that the International Typographical Union and two affiliated locals had violated the Act by insisting upon, and striking for, collective bargaining agreements containing "Laws" and foreman clauses identical with the clauses here involved. The First Circuit, contrary to the court below, found that the natural and foreseeable consequence of the "Laws" clause was to encourage union membership, for employees could not be expected to know which of the "Laws" were excluded as illegal.[11] The unions involved in that case have indicated that they intend to file a petition for certiorari. To resolve the conflict

[10] In *Honolulu Star*, however (274 F. 2d at 569), the court also relied upon an express provision of the contract that "The term 'journeymen' and 'apprentices' shall in no way be understood to apply exclusively to members of the * * * Union", a disclaimer not included in the contract here. It also relied upon a practice—again not present here—of hiring non-union men to resolve any remaining ambiguity.

[11] The First Circuit, unlike the court below, found no difference, insofar as effect on employees was concerned, between setting forth an illegal union-security provision in the contract and then purporting to suspend any illegal clauses (*Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78, 81 (C.A. 2), and *National Labor Relations Board* v. *Gaynor News Co.*, 197 F. 2d 719, 723–724 (C.A. 2), affirmed on another point, 347 U.S. 17), and incorporating only the "legal" provisions of rules which are intertwined with illegality (see 278 F. 2d at 13).

in decisions, it is appropriate that the decision in this case be reviewed also.

2. The question presented is important in the administration of the Act. Since 1947, when limitations on union-security provisions were added to the Act, the Board has continually been faced with the problem of determining whether agreements with such provisions exceed the permissible limits. The problem has arisen not only in unfair labor practice cases, like the present one, but also, and much more frequently, in representation cases under section 9, where the legality of the union-security provision determines whether the contract will be considered a bar to an election.[11] One of the principles which the Board has followed in evaluating union-security provisions for these purposes is that the contract must clearly advise the employees that union membership is not required as a condition of employment, and that they have a 30-day period after employment in which to decide whether to join the union. Implementing that principle, the Board has consistently held that such assurance is not provided either where illegal union-security provisions are specifically set forth in a contract and an attempt is made to suspend their effectiveness by providing that they shall not become operative until authorized by law, or where union rules containing such provisions are incorporated in the contract with a caveat limiting the incorporation

[11] See *Fifteenth Annual Report of the National Labor Relations Board* (G.P.O. 1950), pp. 61–62, 112–116; *Twenty-fourth Annual Report of the National Labor Relations Board* (G.P.O., 1959), pp. 24–26, 69–70.

to provisions not inconsistent with law.[13] The decision of the court below, by drawing what we believe is an artificial distinction between the two kinds of clauses (see pp. 18–20, *infra*), has cast doubt on the validity of that well settled Board principle. The decision thus has an impact not only on cases involving the International Typographical Union,[14] but also

[13] See, *e.g.*, the instant case, 122 NLRB 818; *Red Star Express Lines*, 93 NLRB 127, enforced, 196 F. 2d 78, 81 (C.A. 2); *E. F. Shuck Construction Co.*, 114 NLRB 727, enforced, 243 F. 2d 519, 521 (C.A. 9); *Peabody Coal Co.*, 125 NLRB No. 110; *Unique Art Mfg. Co.*, 83 NLRB 1250; *Hickey Cab Co.*, 88 NLRB 327.

[14] In addition to the instant case and the First Circuit case, there are four other pending cases involving similar ITU contract provisions. One, *Los Angeles Mailers Union No. 9*, 127 NLRB No. 71, is pending in the Court of Appeals for the District of Columbia Circuit on the union's petition to review, Nos. 15721 and 15770. Hearings have been held in the other three, and they are pending decision either by the Board or the trial examiner. *Newspaper Agency Corp.* and *Salt Lake City Mailers Local 21*, Case Nos. 20–CA–1556 and 20–CB–658; *Tribune Publishing Co. and San Francisco-Oakland Mailers*, Case Nos. 20–CA–1553 and 20–CB–657; *New York Mailers, Local No. 6*, Case No. 2–CB–2504.

Although the provisions expressly requiring union membership as a working condition were deleted from the ITU's General Laws by amendments effective January 1, 1959, that modification does not affect the present case or the other ITU cases cited above, all of which involve bargaining agreements executed prior to 1959. Moreover, it may fairly be presumed that this modification reflected only an effort by the Union, while its position was being challenged by the Board, to protect itself against further charges. Should the decision below, upholding the Union's position, be sustained or allowed to stand, the Union would be entirely free to restore the former provisions of its General Laws. In the circumstances, therefore, the controversy is in no sense moot, either legally or practically, and the matter is one of substantial continuing importance warranting resolution by this Court.

on all other contracts utilizing the same technique.[15]

3. The court below erred in drawing a distinction between the type of clause here and that in its earlier decision in *Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78, 80–81. In that case, the court held that a collective bargaining agreement containing an illegal union-security clause unlawfully encourages union membership, notwithstanding an addendum purporting to suspend any provisions of the contract "affected" by the Taft-Hartley Act until they were declared to be legal. The court stated that the question was not only "whether under principles of contract law the addendum would contractually negative the illegal union-security clauses, but whether it would have the effect of preventing the coercion that would otherwise follow from" the illegal clauses (196 F. 2d at 81). The court agreed with the Board that the addendum would not remove the coercive effect of the illegal clauses in the contract because "the vague language of the addendum would not help the ordinary employee to understand that the union-security clause was no longer binding" (*ibid.*). For, as it added in a

[15] This technique was utilized in the National Bituminous Coal Wage Agreement of 1950, as amended, the nation-wide agreement of the United Mine Workers. That agreement has a clause which requires "as a condition of employment employees shall be, or become members of the [United Mine Workers] to the extent and in the manner permitted by law." In *Peabody Coal Co.*, 125 NLRB No. 110, the Board held that such clause led employees to believe that they had to join the union to get a job, and it was thus unlawful. The *Peabody* decision is now before the Seventh Circuit for review, Nos. 12889 and 12915. Cf. *Lewis* v. *Quality Coal Corp.*, 270 F. 2d 140, certiorari denied, 361 U.S. 929.

subsequent case involving a similar clause, "an employee cannot be expected to predict the validity or invalidity of particular clauses in the contract, and will feel compelled to join the union where a union-security clause of questionable validity exists, if only as a hedging device against a possible future upholding of the clause." *National Labor Relations Board* v. *Gaynor News Co.*, 197 F. 2d 719, 723–724 (C.A. 2), affirmed on another point, 347 U.S. 17. See also, *National Labor Relations Board* v. *Gottfried Baking Co.*, 210 F. 2d 772, 780 (C.A. 2); *National Labor Relations Board* v. *Shuck Construction Co.*, 243 F. 2d 519, 521 (C.A. 9); *National Labor Relations Board* v. *Broderick Wood Products Co.*, 261 F. 2d 548, 557–558 (C.A. 10).

The same considerations are equally applicable here and no meaningful distinction can be made between including illegal union-security provisions in the bargaining contract and then purporting to suspend any "illegal" provisions (the situation in *Red Star*), and incorporating by reference only the "legal" provisions of union rules some of which are illegal (the situation here). For, as the First Circuit recognized in *International Typographical Union* v. *National Labor Relations Board*, 278 F. 2d 6, employees reading the limitation in the incorporation clause would have no more reason than employees reading the addendum in *Red Star* to believe that they could refrain from union membership without risking their jobs. Under the addendum, an employee could decide that union membership was not a condition of employment only if he were willing to assume that the union-security

provisions in the contract were invalid and hence inoperative. Similarly, under the "Laws" clause, an employee could deem himself free from the restraining effect of the closed-shop provisions in the ITU General Laws only if willing to "predict" that there would not be "a possible future upholding of the clause[s]." *Gaynor* case, *supra,* 197 F. 2d at 723–724.

Accordingly, the Board was justified in concluding that the purported inclusion into the contract of the ITU General Laws insofar as they were legal did not nullify the impact of the closed-shop requirements of the Laws in the minds of the employees. The court below erred in setting that conclusion aside, and, its action in so doing negatives "the function of the * * * Board as of one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect." *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 488.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 1960.

APPENDIX

In the United States Court of Appeals for the Second Circuit

No. 45—October Term, 1959

(Argued January 12, 1960 Decided May 20, 1960)

Docket No. 25496

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO, RESPONDENTS

Before CLARK, HINCKS AND WATERMAN, *Circuit Judges*

On petition of National Labor Relations Board for enforcement, its order, 122 NLRB No. 92, is set aside and the case remanded.

HINCKS, *Circuit Judge:*

The National Labor Relations Board petitions for enforcement of its order[1] which issued as a result of charges filed by a mail room employee of each of two New York newspapers, the New York Daily News,

[1] The Board's decision and order (which were issued on January 2, 1959; corrected on January 21, 1959; and amended on March 2, 1959) are reported at 122 NLRB 818.

published by News Syndicate Company, Inc., herein called the News, and the Wall Street Journal, published by Dow Jones and Company, Inc., herein called the Journal. The charges were brought[2] only against the News and against New York Mailers Union No. 6, International Typographical Union, AFL–CIO, herein called the Union, with whom, both in 1954 and 1956, the News and the Journal had executed two-year collective bargaining agreements covering their mail room employees.[3] The Board held that these contracts,[4] when read in conjunction with their references to the General Laws of the International Typographical Union, herein called the General Laws, constituted *per se* violations of Section 8(b) (1)(A) and (2), and Section 8(a) (1) and (3) of the National Labor Relations Act of 1947, 29 U. S. C. A. § 151 *et seq.*, by the Union and the News, respectively.

The Board also found that the respondents had, in fact, maintained and enforced unlawful Union security and preferential hiring practices at the News and Journal mail rooms, as a result of which the two complaining employees, Burton Randall, at the News, and Julius Arrigale, at the Journal, were unlawfully discriminated against in their employment. Numerous remedies were ordered, which, however, in view of our conclusions on other dispositive issues, we need not discuss.

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[2] Since no charges were filed against the Journal, the Board made no unfair labor practice findings with respect to it.

[3] All New York City newspaper publishers subscribed to the 1954 and 1956 contracts, herein attacked as unlawful, and which are more fully described below.

[4] The two contracts involved herein are identical in their pertinent provisions and they shall, hereafter, be referred to in the singular.

We will first deal with those contractual provisions held to be *per se* violative of the Act. The contract contains nothing which on its face could be said to be violative of the Act. The General Counsel so conceded at the hearing and the Board does not contend otherwise. Rather, it here advances the same argument which was recently rejected by the District of Columbia Circuit. *Honolulu Star Bulletin* v. *N.L.R.B.*, 274 F. 2d 567. Because of our substantial agreement with the penetrating and sound conclusion of that court, we shall have less to say on this aspect of the instant controversy than if the argument had not already had such authoritative judicial consideration.

The Board's position now is that, notwithstanding the seemingly legal contractual provisions which limit mail room employment to "journeymen and apprentices," who are defined quite innocuously in Section 20-b of the contract and without reference to Union membership,[5] see *Evans* v. *International Typographi-*

[5] Excerpt from Section 20-b:

"* * *. Only journeymen and apprentices shall be employed on work covered by this agreement. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided elsewhere in this agreement. Journeymen are defined as: (1) Persons who prior to the effective date hereof worked as such in the mailing rooms of papers signatory to this contract; (2) persons who have completed apprentice training as provided in this contract, or have passed a qualifying examination under procedures heretofore recognized by the Union and the Publishers; (3) persons who have passed an examination recognized by both parties to this contract and have qualified as journeymen in accordance therewith. Persons seeking to qualify as journeymen shall be given an examination under nondiscriminatory standards and procedures established by the parties hereto by impartial examiners qualified to judge journeyman competency selected by the parties hereto. In the event agreement cannot be reached on the standards or procedures to be followed, or the examiners to

cal Union, D.C. Ind., 81 F. Supp. 675, 686, the contract is illegal because of a clause therein which incorporates those General Laws of the International Union which are "not in conflict with this contract or with federal or state law" to "govern relations between the parties on conditions not specifically enumerated herein."[*]

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conduct such examinations, the dispute shall be submitted to the Joint Standing Committee whose decision shall be final and binding on the parties."

The General Counsel commented at trial that "My reading of the contract did not indicate that there was any violation with respect to the method by which a person could become a journeyman, at least from the face of the contract. That appeared to be valid as set out in Section 20(b) of the contract."

[*] Section 24 of the contract reads:

"Both parties agree that their respective rights and obligations under this contract will have been accorded by the performance and fulfillment of the terms and conditions thereof and that the complete obligation of each to the other is expressed herein. It is understood and agreed that the General Laws of the International Typographical Union in effect January 1, 1955, not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein."

Section 38 provides:

"*Mutual Guarantees.* Because of the enactment of the Labor-Management Relations Act of 1947 this contract differs from contracts between these parties over a period of many years. It is understood and agreed, however, for the duration of this contract, that if any provision modified from any preceding contract or excluded from this contract solely because of the restrictions of law, no longer is held to be inoperative, either by legislative enactment or by decision of the court of highest recourse, then such provision automatically shall become a part of this contract, to the extent permitted, and be in force and effect as though it had been originally made a part hereof."

The respondents assert without challenge that no union security clause has appeared in a collective bargaining agreement between the parties since 1948.

Certain of these General Laws concededly condition journeymen and apprentice status on Union membership and they further require each local Union to establish Union employment priority and seniority systems covering its members.[1] Such conditions, the Board held, unlawfully created discriminatory and coercive

[1] Extracts from General Laws:

"ARTICLE V—FOREMEN

"Section 11: All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft and entitled to all the privileges and benefits of membership.

"ARTICLE VII—MACHINES

"Section 1: * * * None but members [of the ITU] shall be permitted to operate, maintain and service any mailing machinery or equipment when used on work under the jurisdiction of the International Typographical Union. * * *

"Section 2: In machine offices under the jurisdiction of the International Typographical Union, no person shall be eligible as a 'learner' on machines who is not a member of the International Typographical Union. * * *

"ARTICLE X—PRIORITY

"Section 2: Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

"Section 5: Any member engaged to serve the International Typographical Union, a subordinate union or to perform work in the interest of the organized labor movement, or any member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the priority substitute competent to perform the work if one is available. The situation holder shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority sub, and considered in the

conditions. It also held illegal the contractual provisions vesting hiring authority in the mail room foremen, who were required to be Union members in good standing, since, reasoned the Board, such foremen would have to follow, both under the terms of the contract and under their Union oath,[8] the closed-shop and priority and seniority system provisions of the General Laws. Finally, on the basis of the foremen's hiring authority under the contract and their Union obligations, the Board concluded that, regardless of the unlawful provisions of the General Laws, the News had unlawfully delegated exclusive mail room hiring to the Union, in a fashion incompatible with the expressed standards required by the Board.

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category of a new situation. Upon reporting for duty full priority rights shall be restored.

"Section 6: Available priority substitute competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I.T.U. laws or contracts: *Provided*, Should a substitute with greater priority become available such substitute shall be placed on said situation: *Provided, further*, Local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to, but not more than ninety days from absence of situation holder."

[8] The Board points to various provisions in the General Laws and local Union constitution, by-laws and rules which require all Union members to comply with all General Laws and local Union laws. These laws in turn provide for closed-shop and preferential hiring conditions. The Union points to both a 1951 amendment of the General Laws which abolished an oath provision requiring discrimination against nonmembers and a 1953 amendment to the ITU's Constitution which abolished a prior provision requiring all members to accord preference to other members.

Mountain Pacific Chapter of the Associated General Contractors, 119 NLRB 883, 893, 897, enforcement denied, *N.L.R.B.* v. *Mountain Pacific Chapter of Assoc. Gen. Con.,* 9 Cir. 270 F. 2d 425.

The respondents[9] raise several serious objections to the Board's conclusion that the contract was illegal on its face. But we find it necessary to go no further than to overrule the Board's holding on the reasoning and on the ground developed in *Honolulu Star Bulletin* v. *N.L.R.B., supra.* See also *Lewis* v. *Quality Coal Corp.,* 7 Cir., 270 F. 2d 140. The facts of the case here fall directly within the scope of the *Honolulu Star* case: the contract here contained no explicit illegal Union security clause and did not purport to incorporate illegal provisions of the General Laws, but only those which were "not in conflict * * * with federal or state law * * *."[10] In this respect the contract is distinguishable from those involved in *Red Star Express Lines* v. *N.L.R.B.,* 2 Cir., 196 Fed. 2d 78, and other cases relied on by the Board, such as *N.L.R.B.* v. *Gottfried Baking Co.,* 2

[9] In addition to the respondents, the International Typographical Union, AFL-CIO, has filed a brief in opposition to the Board's petition, pursuant to this Court's permission.

[10] While in the contract before us the term "journeyman and apprentice" is not explicitly defined to exclude nonunion employees, the contract did not, as in the *Honolulu* case, specifically provide that the term "journeyman and apprentice," was in no way to be interpreted as applying exclusively to Union members. However, we do not read the *Honolulu* opinion as turning primarily upon that provision. Its real thrust was its rejection of the same incorporation by reference argument here urged. Indeed, in an earlier case before the Board, a trial examiner found similar contractual provisions valid and he rejected the "incorporation by reference theory" here advanced. The Board, at that time, did not object to his ruling. *Matter of Kansas City Star Co.,* 119 NLRB 972.

Cir., 210 F. 2d 772, and *N.L.R.B.* v. *Gaynor News Co.*, 2 Cir., 197 F. 2d 719, affirmed 347 U.S. 17. In such cases, hypothetical language in collective bargaining agreements as to the effect of illegal union security provisions which were explicitly included therein was thought to be insufficient to negate their illegal coercive force. The cases make it plain that in scanning a contract for its possible coercive effect on employees the test is whether the natural and foreseeable consequence of the language adopted is to encourage union membership. Cf. *Radio Officers Union* v. *N.L.R.B.*, 347 U.S. 17, 52. We hold this is not such a contract.

The Board also held that the contract, by its reference to the General Laws, delegated complete control over seniority matters to the Union, and hence tended to encourage Union membership in violation of the Act. In so ruling, the Board relied upon *Matter of Pacific Intermountain Express Co.*, 107 NLRB 837, enforced as modified, *N.L.R.B.* v. *International Brotherhood of Teamsters*, 8 Cir., 225 F. 2d 343; see also *N.L.R.B.* v. *Dallas General Drivers, Etc.*, 5 Cir., 228 F. 2d 702.

As to this we think there is a fatal defect in the Board's minor premise, viz, that unrestricted hiring and seniority control was, under the contract, delegated to the Union. Initially, we note that the contract itself does not purport to make such a delegation: on the contrary, it deals specifically with many crucial problems of employee priority and seniority. Thus, under Section 20–a of the contract, the foreman is given hiring authority, but the order of hiring priority and seniority is clearly spelled out with respect to decreasing and increasing the work

force.[11] Furthermore, under Section 22 the seniority status of employees who are on leave of absence for military and Union reasons is also expressed in the contract.[12] We are, therefore, hard pressed to dis-

[11] Section 20–a of the contract reads:

"The operation, authority, and control of each mail room shall be vested exclusively in the office through its representative, the Foreman. In the absence of the Foreman, the Foreman-in-Charge shall so function. Foremen of Mail Rooms have the right to employ help and may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, which shall be kept conspicuously posted, and which shall in no way abridge the civil rights of employees or their rights under accepted International Typographical Union laws, and (4) to decrease the force, such decrease to be accomplished by discharging first the person or persons last employed, either as regular employees or as extra employees, as the exigencies of the matter may require. Should there be an increase in the force, the persons displaced through such cause shall be re-employed in reverse order in which they were discharged before other help may be employed. Upon demand, the Foreman shall give the reason for discharge in writing. The substitute oldest in continuous service shall have prior right in the filing of the first vacancy."

Section 20–b reads:

"The Foreman shall do all the hiring and discharging of all employees engaged in working in the various mail rooms. The Foreman shall have sole authority to issue orders, but he may designate other members to act as Assistant Foreman to direct the work, and all employees shall comply with all such orders issued within the terms of this agreement. Failure to comply shall constitute grounds for discharge."

[12] "Section 22–a. *Union Activity.* When any members of New York Mailers' Union No. 6 are on leave of absence from their jobs because of holding office in New York Mailers' Union No. 6, or the International Typographical Union, or performing any service for these Unions, such members shall be returned to their former or similar positions on the expiration of their leave. The Union shall certify to such absence to the Foreman in writing.

"Section 22–b. In cases where employees are admitted as

cover language indicative of a contractual intent to delegate authority to the Union to determine the seniority of even its own members, since it would appear that any General Laws dealing with seniority matters would be "in conflict with this contract," and would not concern "relations between the parties on conditions not specifically enumerated herein."[13] Moreover, under Section 33 seniority controversies, at least those arising out of the contractual provisions, were subject to the contractual arbitration machinery and were not under exclusive Union control.[14]

Even if we were to assume that the contract incorporates those General Laws which provide that local Unions shall maintain priority and seniority lists of

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residents of the Union Printers' Home, or who enlist in or are drafted for service in the military or naval services of the United States or the Dominion of Canada (or their allies) in time of war or for the duration of any period of national emergency proclaimed by the governments of said countries or during the time when such armed forces are engaged in active combat with the military forces of another nation which presents a threat to the security of the United States or Canada, or those who may actively engage in war work for the American Red Cross, or other similar accredited agencies, their situations and/or priority standing shall be protected and upon again reporting for duty the situations and/or priority standing formerly held by these employees shall be restored to them."

[13] See fn. 6, *supra*.

[14] Section 33-b provides:

"To the Joint Standing Committee shall be referred for settlement all questions which may arise as to the scale of wages, all disputes (except discharge cases) arising out of the operation of this agreement, all disputes regarding the interpretation of any portion of this agreement and any and all disputes (except discharge cases) arising out of, relating to, or affecting the operation of this contract. The Joint Standing Committee must meet within five (5) days from the date on which either party hereto, through its authorized representative, notifies the other party in writing that a meeting is desired and

their members,[15] we could not accept the Board's conclusion that the parties had thereby delegated exclusive control over seniority matters to the Union. The contract expressly provides that "all disputes arising out of, relating to, or affecting the operation of this contract" are subject to arbitration, and surely seniority disputes would be included therein. The Board's contrary view, which is based upon the fact that the General Laws were not subject to arbitration, is not persuasive, since it would be the local seniority lists rather than the General Laws which would be arbitrated. Finally, the uncontradicted testimony of the Union's president that all controversies dealing with priority and seniority were subject to, and had, in fact, gone to arbitration, indicates that the parties interpreted the contract in conformity with the natural meaning we assign to it.

Our holding that the contract did not provide for a closed-shop largely undermines the foundation for the Board's contention that the contractual provision giving Union foremen hiring authority was, *per se*, an unlawful attempt to maintain closed-shop and Union-controlled hiring practices. The foremen, under the contract at least, were not subject to the conflicting obligations of two masters. Regardless of the Union obligations to which, without more,[16] a foreman would be subject by reason of his Union

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shall proceed forthwith to settle any questions before it. Such decision to be final and binding on both parties to this contract."

Section 33–a provides that the Joint Standing Committee shall be composed of four members; two members to be named by the Publisher, and two members by the Union.

Section 33–c provides for a Board of Arbitration, in case of a deadlock in the Joint Standing Committee, said Board to be composed of the Committee and a fifth, disinterested party.

[15] See fn. 7, *supra*.

[16] See fn. 8, *supra*.

membership, Section 20-c of the contract specifically provides that: "The Union shall not discipline the foreman for carrying out the instructions of the publisher or his representative in accordance with this agreement." Furthermore, Section 4 provides: "* * * Foremen * * * shall be appointed and may be removed by the Publishers." By these provisions the parties clearly indicated that the foremen are *solely* the employers' agents and that they are under an obligation to act in accordance with the agreement, in spite of Union ties and obligations which otherwise might control. See *Evening Star Newspaper Co.* v. *Columbia Typographical Union,* 141 F. Supp. 374, aff'd D.C. Cir., 223 F. 2d 697; cf. *Evans* v. *International Typographical Union, supra,* at 683–684. In any event, there is no presumption of law, we hold, that under the terms of this contract a foreman would be guided by his Union obligations rather than those expressed in the collective bargaining agreement between his employer and the Union. *Honolulu Star Bulletin* v. *N.L.R.B., supra; Carpenters District Council, Etc.* v. *N.L.R.B.,* D.C. Cir., 274 F. 2d 564.

Of course, few would doubt that in practice Union foremen could discriminate against nonunion applicants in the exercise of their hiring power. But a mere power to discriminate is not illegal as even the Board appears to recognize. See *Evans* v. *International Typographical Union, supra,* at 684–685; cf. *Chicago Rawhide Mfg. Co.* v. *N.L.R.B.,* 7 Cir., 221 F. 2d 165, 170; *Coppus Engineering Corp.* v. *N.L.R.B.,* 1 Cir., 240 F. 2d 564, 572, 574. Indeed, such recognition is implicit in the Board's order which prohibits the News and the Union from requiring mail room foremen to be Union members *only until such foremen are directly advised by the Union* that they can disregard those provisions of the General Laws which

call for closed-shop conditions and preferential Union hiring. In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives. *N.L.R.B.* v. *Mountain Pacific Chapter of Assoc. Gen. Con., supra,* at 431, cf. *N.L.R.B.* v. *Revere Metal Art Co., Inc., etc.,* 2 Cir., May 6, 1950, —— F. 2d ——.

Nor can we sustain the Board's finding that irrespective of the closed-shop provisions of the General Laws and the foreman's obligation to follow them, his hiring authority, in fact, vested the Union with exclusive control over hiring. The Board's so-called *Mountain Pacific* doctrine even if sound is not applicable here.[17] For the News, not unlike numerous other employers, merely placed its hiring powers in the hands of its principal employee, the foreman who discharged that responsibility on the employer's premises. The News, like any other employer, is of course entitled to employ only Union foremen, if it so desires. Sections 2 (3) & (11), 14(a) of the Act, 29 U.S.C. §§ 152 (3) & (11), 164(a); *Carpenters District Council, Etc.* v. *N.L.R.B., supra;* cf. *A. H. Bull Steamship Co.* v. *National Marine Engineers Beneficial Ass'n,* 2 Cir., 250 F. 2d 332. But, as we have already noted, the foreman's prime allegiance and responsibility was owed to his employer and to the terms of the collective bargaining agreement. We are unable to discover any reasonable ground of support for the conclusion that these hiring

[17] *N.L.R.B.* v. *Mountain Pacific Chapter of Assoc. Gen. Con., supra; N.L.R.B.* v. *Swinerton & Walberg Co.,* 9 Cir., 202 F. 2d 511, cert. denied 346 U.S. 814; *N.L.R.B.* v. *International Association of Heat and Frost Insulators, etc.,* 1 Cir., 261 F. 2d 347; *Eichleay Corp.* v. *N.L.R.B.,* 3 Cir., 206 F. 2d 799; cf. *Morrison-Knudsen Company, Inc., etc.* v. *N.L.R.B.,* 2 Cir., March 2, 1960, —— F. 2d ——.

conditions would lead an employee to legitimately assume, regardless of the actual operations of the arrangement, that his employment opportunities depended upon his Union membership.

We conclude, accordingly, that the parties did not violate the Act by the mere execution and the maintenance of the collective bargaining contract.[18]

The Board also found that quite apart from the supposed illegality of the contract the respondents had in practice maintained and enforced closed-shop and preferential hiring conditions at the News and Journal through their apprenticeship and competency systems, which we will presently describe. The essence of its position is that respondents maintained a system whereby only Union members could obtain permanent mail room employment, and whereby such members were favored over nonmembers in the "shape-up" hiring for other jobs.

The employment practices thus impugned were substantially as follows. Full time employees, known as "regular situation holders," form the bulk of the mail room labor force and they are not required to "shape" for work, i.e., to be hired on a day-to-day basis. The record indicates, without apparent exception, that such employees are all both journeymen and Union members, although, for aught that appears, their Union membership antedated the passage of the Taft-Hartley Act. The foreman frequently exercises his hiring authority in order to both provide replacements for absent regular situation holders and increase the labor force when increases are needed. The first group

[18] Because of our holding herein, we need not pass upon the Union's claim that the Board's concession that the respondents entered into and administered the contract in good faith precludes findings of violations of §§ 8(a)(3) and 8(b)(2). As to this, each side invoked *Radio Officers Union* v. *N.L.R.B.*, 347 U.S. 17.

to which he turns is that composed of men termed "regular substitutes." These men are available daily to supplement the regular work force of any single publisher and although they are not guaranteed five work shifts per week they normally work that often. It appears that each of them is also both a journeyman and a Union member. The Union "chapel" chairman,[19] maintains a priority list of these regular substitutes, whose priority is determined by the date on which they commence work with a particular employer, and that date is indicated by the deposit of their Union card with the chapel chairman. Regular substitutes are hired by the foreman in the order in which their names appear on this list.

If, as is quite often the case, the size of the day's newspaper requires the employment of additional mailers, the foreman next hires from men who shape the shop "regular situation holders" and "regular substitutes" from other newspapers, in preference to "other extras." The Board describes such "other extras" as "non union shapers" and the Union terms them "casuals without journeyman status." These conflicting descriptions point up the nub of the dispute. The record indicates that many of these "other extras," including the two whose complaints initiated these proceedings, are men engaged in full-time occupations outside the newspaper industry who shape either irregularly or regularly, but at infrequent intervals throughout the week. Thus ostensibly, at least, the hiring procedures are based upon nondiscriminatory contractual criteria, i.e., competency as evidenced by journeyman status, and seniority based upon length of employment as a journeyman with the hiring employer and as a journeyman elsewhere in

[19] The "chapel" chairman is equivalent to a shop steward and each publisher's mail room constitutes a "chapel."

the industry.[20] And the respondents persuasively contend that thus to accord priority in the hire of extras to men who regularly work for the employer as well as to men who have journeyman status with other employers, is entirely consistent with lawful hiring based upon competency and legitimate employee qualifications quite apart from Union membership.

The Board, on the other hand, strongly urges that since outside Union men are always given shaping preference, even if they have never previously worked at the particular hiring shop, as against all nonunion shapers, including those who have shaped at that shop for many years, unlawful discrimination is proved. It insists that the apprenticeship and competency systems are nothing but camouflage to conceal and perpetuate accomplished discrimination. We turn, therefore, to a consideration of these systems.

Two routes were open to a mail room employee who desired to achieve journeyman status—he could either complete an apprentice training program or he could pass a competency examination. While it is true that apprentices were hired by the foremen,[21] as we said above the contract did not place the hiring authority in the Union. Nor does the record indicate any discriminatory practices in the actual hiring of

[20] However, the order of hire among regular situation holders and regular substitutes from other papers was first that of men who had not had five days' work that week and next that of men who had already worked five days.

[21] We note, however, that while under Section 20–b of the contract the foreman was to hire and discharge all employees, still Section 27–b provided that a Joint Apprenticeship Committee, composed of an equal number of Union and employer representatives, was to have jurisdiction over all provisions affecting apprentices and was to have control over and responsibility for the selection of apprentices.

apprentices.[22] Section 20–b of the contract provided that the qualifying examination for prospective journeymen was to be given "by impartial examiners qualified to judge journeyman competency selected by the parties hereto."[23] The examinations were given, in fact, by a committee composed of Union officials and mail room foremen. The only concrete evidence of the manner in which this testing system operated is the incident which led to the filing of charges by Burton Randall, a nonunion extra at the News.

In the spring of 1956 the News, along with other New York City newspaper publishers, concurred in a Union-initiated plan which contemplated the promotion to "regular substitute" status of those extras (none of whom were apprentices) who had earned 15 vacation credits in 1954 and 1955. Such a vacation credit standing indicated that a man had averaged almost three days' work per week. The Union hoped that its members might perform the increased volume of mail room work which had become available in the New York mail rooms. The News accepted the plan and the proposed objective standard of 15 days' vacation credits, allegedly because it recognized the need for additional "regular substitutes." It reasoned that the prospective selectees, who had demonstrated frequency of employment over a considerable period

[22] The record shows that the Union has occasionally requested and received employer permission to shorten the prescribed six-year apprenticeship program. This permission was allegedly given on several occasions when an employer needed additional journeymen. In any event, all apprentices were required to pass the same competency examination as other applicants for journeyman's status, and under Section 27–b of the contract (see fn. 21, *supra*) any question affecting apprentices upon which the Joint Apprenticeship Committee could not agree was subject to arbitration.

[23] See fn. 5, *supra*.

of time, would add the greatest available regularity, dependability and competence to the regular work force. Approximately sixty nonunion men shaped at the News. Of these thirty-one met the proposed standard and were made regular substitutes after they had each passed the journeyman's competency examination. Thereafter, each of the new regular substitutes was hired prior to Randall, although he had shaped at the News for over ten years, which was longer than thirty of them. Randall's full-time outside occupation prevented him from shaping except on Friday and Saturday evenings but his work on these nights while regular was insufficient to give him the 15 days' vacation credit.

The Board found that as a result of these practices Randall, who continued to shape regularly on Friday and Saturday evenings, worked later hours, performed more difficult work, and lost overtime pay. It also found that Randall was denied employment on one Sunday evening, as a result of a Union reprisal against him for his filing of unfair labor practice charges.

We find, however, a dearth of evidence either that a Union journeyman has ever been hired in preference (let alone, an unlawful preference) to a nonunion journeyman,[24] or that the qualifying standards for

[24] Record statements by Union foremen that they would always hire "outside union men" in preference to "non-union extras" do not demonstrate discriminatory hiring practice in the absence of evidence that they or the Union ever committed, in fact, any discriminatory act in denying employment to a non-union journeyman. For aught that appears, these were mere predictions of what they would do if the situation ever arose. *Local 553, International Brotherhood of Teamsters* v. *N.L.R.B.*, 2 Cir., 266 F. 2d 552. Furthermore, on the issue of the motivation behind the hiring plan of extras, this testimony, in context, is of scant help, because (1) the expression "outside union men" is continually interchanged with that of "com-

taking a competency examination are discriminatory. The record is barren of even the slightest hint that there has been discrimination in the conduct of the examinations.[25] Availability, dependability and regularity of service, as well as mere competency, are valid nondiscriminatory considerations in determining the order of hire. The fact that one applicant is as competent as another, does not mean that the other may not properly be preferred on the basis of his other qualifications. And the fact that those achieving status as new "regular substitutes" subsequently became Union members and even indicated their willingness to do so prior to the adoption of the standard, does not indicate, at least on this record, that the standard, seemingly fair, was discriminatory in its effect. Randall admitted that he would have welcomed the opportunity to become a Union member, and for aught that appears in the record, so would the remaining extras who did not meet the established standard.

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petency" and "journeyman," and (2) due to the lack of nonunion journeymen practically all journeymen were Union members. What is even more important, *no* "non-union extras" *were journeymen* and *all* "outside union men" *were journeymen.*

[25] The only offered evidence as to the fate which would await a nonunion man claiming competency who made application for employment as a journeyman, was Union testimony, here unchallenged, concerning past practices under a substantially identical contract between the Printers' Union, New York Typographical Union, No. 6, and the Publishers Association of New York City. Over fifty nonunion journeymen, claiming competency, were allegedly given the identical competency examination as that given apprentices, and while only twenty-six passed, none of those who failed complained of discrimination. Interestingly enough, all of the successful twenty-six applicants went to work prior to their admission into the Union, and while the Union application of one was rejected he remains at work in the trade. See also *Evans* v. *International Typographical Union*, *supra*, at 686–687.

We conclude that the record does not warrant a finding that the hiring system in general, or the competency system in particular, by its discrimination against nonunion applicants, encouraged Union membership.

This conclusion disposes of Arrigale's charge against the Union. For that charge was based only on a claim of unlawful discrimination inherent in the hiring system. But Randall also charged, and the Board found, a specific act of discrimination which caused him loss of employment on one Sunday night. Concededly, Randall did not work on the night in question. And we should hesitate to sustain a finding based solely on Randall's contradicted testimony, that the foreman had told him that he had been instructed by the Union president to reduce Randall's standing on the list of casual shapers for that night. But there was more than this in the record. There was direct evidence, not contradicted we think, that Randall had long stood first on the list of casual shapers for Friday and Saturday nights and also on the Sunday night immediately preceding the Sunday night in question when, according to his direct testimony, for the first time several extras were put to work ahead of him. We cannot say that it would be unreasonable to infer that this abrupt change in his position on the list was due to the fact that he had shortly before filed charges against the respondents, especially in the absence of any other satisfactory explanation for the change. On the whole, we think the finding of discrimination causing Randall loss of one night's employment was sufficiently supported in the record and constituted a violation of §§ 8(a)(4) and 8(b)(2).

We hold, therefore, that we must deny enforcement of the Board's order except so much of it as is based

on the finding of unlawful discrimination against Randall which we have just sustained. However, since the exception covers so small a portion of the order, in the interest of clarity we will deny the petition for enforcement *in toto*, and leave it to the Board, if so advised, to enter an order consistent with our opinion. See *Honolulu Star Bulletin* v. *N.L.R.B.*, *supra*.

Order set aside and case remanded.

In the United States Court of Appeals for the Second Circuit

No. 25496

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO, RESPONDENTS

DECREE

Before CLARK, HINCKS and WATERMAN,
Circuit Judges

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against Respondent Company News Syndicate Company, Inc., its officers, agents, successors, and assigns and Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL–CIO, its officers, representatives, agents, successors, and assigns on January 2, 1959. The Court heard argument of respective counsel on January 12, 1960, and has considered the briefs and transcript of record filed in

this cause. On May 20, 1960, the Court being fully advised in the premises, handed down its decision setting aside the Board's order and remanding the case to the Board.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Second Circuit that the said order of the National Labor Relations Board directed against Respondent Company, News Syndicate Company, Inc., its officers, agents, successors, and assigns and Respondent Union, New York Mailers' Union No. 6, International Typographical Union, AFL–CIO, its officers, representatives, agents, successors, and assigns be and it hereby is set aside and remanded to the Board for entry of an order consistent with the Court's opinion.

CHARLES E. CLARK,
Judge, United States Court of Appeals for the Second Circuit.

C. C. HINCKS,
Judge, United States Court of Appeals for the Second Circuit.

Filed: June 8, 1960.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 333

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,

Respondents.

BRIEF OF RESPONDENT NEWS SYNDICATE CO. INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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No. 328

IN THE

Supreme Court of the United States

October Term, 1955

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM FOR RESPONDENT NEW YORK MAILERS' UNION NO. 6

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 339

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM FOR RESPONDENT NEW YORK MAILERS' UNION NO. 6

Respondent New York Mailers' Union No. 6 submits this memorandum to express its acquiescence in the petition of the Government for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit in *National Labor Relations Board v. News Syndicate et al.*, 279 F. 2d 323, entered May 20, 1960. We agree that the decision below and the decision of the Court of Appeals for the District of Columbia in *Honolulu Star-Bulletin et al. v. N.L.R.B.*, 274 F. 2d 567 (C.A.D.C., 1959) are in conflict with the decision of the Court of Appeals for the First Circuit

in *International Typographical Union, et al.*, v. *N.L.R.B.*, (278 F. 2d 6, C.A. 1, 1960), No. 340, October Term, 1960, and we agree with the Government's position as to the importance of the questions presented.[1] Our reasons are more fully set forth in the petition for certiorari in *International Typographical Union* v. *N.L.R.B., supra.*

However, we submit that Judge Hincks' opinion for the Court below is so compellingly and carefully reasoned (See Petition, pp. 22-43) as to warrant consideration by this Court of summary affirmance of the decision below, as in *United States* v. *Lane Motor Co.*, 344 U.S. 630, 631 (1953) and in *Sword Line, Inc.* v. *United States*, 351 U.S. 976 (1956). Our reasons, briefly stated, are:

1. The Government concedes (Pet. p. 8) that the findings of the Board were "in large part, set aside by the Court of Appeals". No issue is made of this in the petition. We therefore feel it unnecessary to burden this Court with a detailed examination of the evidence, but respectfully refer the Court to the

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[1] We stress our strong agreement with the Government's view that the revision of the I.T.U. General Laws, referred to in its Petition at p. 17, fn. 14, does not render the issue moot. Those changes were principally made under the duress of a lower court *interim* injunction. *Alpert* v. *I.T.U.*, 161 F. Supp. 427, 430-431 (D.C. Mass., 1958). In subsequent proceedings in that case, after revisions in the General Laws had been made, the Court noted that "The number of items which petitioner (the General Counsel of the NLRB) still contests are extensive; indeed, *petitioner now objects to more than he did originally*" (*id.* at page 432, emphasis supplied). It is clear from this and other cases that the Board asserts a power to decide for the members of the ITU what the General Laws may, or should, contain. This threat to the internal democratic freedom of ITU members has not been dissipated by the revision of the laws.

opinion below for what we believe to be an entirely full, fair and accurate statement of the case. See *N.L.R.B.* v. *Pittsburgh S. S. Co.*, 340 U.S. 498, 502-03 (1951); *N.L.R.B.* v. *American National Ins. Co.*, 343 U.S. 395, 409-10 (1952).

2. The questions presented by the Government are solely issues of law, relating to the proper construction of the agreement to which the respondents were parties, and its legality under the Act. Hence no problem arises under *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 488 (1951). See *Great Northern Ry.* v. *Merchants' Elevator Co.*, 259 U.S. 285, 291 (1921). "Where Congress has in the statute given the Board a question to answer, the Courts will give respect to that answer; but they must be sure the question has been asked". *N. L. R. B.* v. *Insurance Agents*, 361 U.S. 477, 499 (1960). Here the question has not been asked (*id.* at 490, 498).

3. As we read the Government's petition, it appears to be conceded (Pet. p. 2., fn. 2) that if this Court sustains the Court below on the principal issue tendered by the Government, affirmance of the opinion below on the footnoted issues is also required. The sole question before this Court is, therefore, whether a contract clause providing that,

> "It is understood and agreed that the General Laws of the International Typographical Union, in effect January 1, 1955, not in conflict with this contract or federal or state law, shall govern relations between the parties on conditions not specifically enumerated herein",

(See Pet. p. 25, fn. 6) renders an agreement illegal where, as is not disputed, certain of the General Laws

contemplate closed shop conditions (See Pet. p. 26, fn. 7).

The Board has persistently read the words "not in conflict with . . . federal . . . law" as words of incorporation by reference, rather than as words of exclusion, a matter more fully discussed in the petition for certiorari in No. 340, this Term at pp. 8-13. The Board's misconstruction was exposed by the Court below (Pet. pp. 28-29, particularly fn. 10), and by the District of Columbia Circuit (Pet. in No. 340, pp. 19a, fn. 2; 21a). For the reasons there set forth, we believe that the error in the Board's reasoning is so patent as to warrant summary affirmance.

Indeed, the Board itself appears to recognize this error, for it now states that the agreement is to be judged, not by its terms, but is to be "evaluated in the light of foreseeable employee reaction" (Pet. p. 11). Chief Judge Prettyman, in *Honolulu Star-Bulletin* (See Pet. in No. 340, pp. 20a-22a), whose opinion in this respect was fully adopted by the Court below (pet. pp. 24-28), effectively laid this ghost to rest. To find "restraint or coercion" the Board must assume that the hypothetical employee or applicant for employment it wishes to protect will first read the agreement with the close attention of a lawyer in the Board's regional office and conclude, like him, that it is valid on its face (R. 521-522). But even this will not provide the putative "coercee" the blissful freedom from subjective apprehension which the Board has created as a statutory objective. Since the Board assigns him a rare obtuseness or cynical skepticism, he will disregard the plain meaning of the agreement's "not in conflict with law" proviso and sedulously seek out and read a copy of the ITU's General Laws

except, of course, Article XIV which provides that the operation of any General Law is suspended "in circumstances in which the enforcement or observance would be contrary to public law". (See Petition in No. 340, p. 20a) Such a reading will (under the Board's theory) inevitably persuade him to the conclusion that given a future possible opportunity (and contrary to both the contract and the normal desire of normal citizens to act lawfully), the parties would illegally apply one or another of the ITU's General Laws and thereby prejudice his rights. At this point he is ripe to be "restrained or coerced." And at this point, we say that this is administrative adjudication run amuck. The Board's decision in this case assumes a knowledgeability, sensitivity, acquaintance with labor law, and doggedness in seeking to be "restrained or coerced" which are never to be found among applicants for employment or employees, in this or any other industry.[2] There must be a limit to the amount of strain the Board can place on suspicion and speculation based upon ludicrous flights from industrial reality. *Cf. NLRB* v. *P. R. Mallory & Co.*, 237 F. 2d 437, 444 (CA 7, 1956); *Miller Mfg. Co.* v. *NLRB*, 265

[2] That there may be present some degree of uncertainty in the contract we readily concede. The reasons why collective agreements of necessity contain large areas of uncertainty are developed in *United Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578-582 (1960). But uncertainty is not "restraint or coercion," and the Board's speculation that there may be a class of employees too obtuse to understand the plain meaning of plain language cannot establish that the respondents sought to, or did violate the Act. It is noteworthy that in all of the litigation on this issue the Board has never alleged, or proved, that *any* ITU General Law has been illegally applied since passage of the Act in 1947.

F. 2d 225, 226 (CA 7, 1959); *NLRB* v. *Thomas Rigging Co.*, 211 F. 2d 153, 158 (CA 9, 1954).

The fact that the Board relies on surmise, and not on proof, is most glaringly illustrated by the order which it proposed for entry. Despite the urging of the General Counsel (R. 701) and the union that the Board specify which of the General Laws are illegal, the Board relegated this problem entirely to the respondents (R. 717) and failed to make any specification whatever. In No. 340, *I.T.U., et al.* v. *N.L.R.B.*, the proposed order as enforced by the Court of Appeals for the First Circuit would invalidate the "laws" clause in its entirety, even though no question has been raised as to the validity of the great bulk of the General Laws. Had the Board not engaged in mere speculation as to what might happen; had it instead awaited proof that one or another General Law had been unlawfully applied, this matter could have been explored in the light of reality rather than conjecture.

We think it clear that "the whole contract shows respect for the law and not defiance of it . . . There is no reason apparent why terms should be implied from some outside authority to take the place of legal terms collectively bargained". *N.L.R.B.* v. *Rockaway News Co.*, 345 U.S. 71, 78-79 (1953). This Court has already pointed out that "the Board may not, either directly or indirectly, . . . sit in judgment upon the substantive terms of collective bargaining agreements", *N.L.R.B.* v. *American National Insurance Co.*, 343 U.S. 395, 404 (1952).

CONCLUSION

For the reasons set forth respondent urges that the petition for a Writ of Certiorari be granted and that summary affirmance of the decision below be entered.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1960

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,

Respondents.

BRIEF OF RESPONDENT NEWS SYNDICATE CO. INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The primary concern of the respondent company, News Syndicate Co. Inc. (publisher of the newspaper "Daily News" and hereinafter referred to as the "News"), on the petition for enforcement of the Board's order in the Court of Appeals, was with the "reimbursement of dues" remedy imposed by the Board jointly and severally upon the News and the Mailers' Union. Under the facts and circumstances of the case, the News argued that the imposition of that remedy, which then involved a potential liability in excess of a quarter of a million dollars, was inappropriate, illogical and unjust. The major thrust of the brief of the News to the Court of Appeals was directed toward that contention.

The Court of Appeals did not reach the question of the appropriateness of the remedy, since it concluded that there was no violation of the law by reason of the contract provisions or by reason of the hiring practices.[1] The Board's principal argument—that the failure to specify which General Laws of the International Typographical Union (hereinafter the "ITU") were incorporated by reference into the contract had the effect of encouraging Union membership in that employees would tend to view the contract as including rules requiring Union membership as a condition of employment—was rejected. The Court accepted the contention of respondents that the ITU General Laws "in conflict with * * * federal law" were not incorporated into the contract and that no employees were coerced into joining the Union on the understanding that Union membership was a condition of employment.

The News had never read the contract as incorporating any unlawful General Laws and doubts that any employee or prospective employee felt constrained to join the Union because he read the contract and the General Laws and concluded that membership in the Union was a condition of employment. At least there was no evidence in the record that the incorporation by reference of the General Laws into the contract had any such effect upon any individual employee.

The record in the case shows that all who worked at the trade, including the charging parties and other casual

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[1] The Court of Appeals did sustain the Board's finding of discrimination against the charging party in the News case by reason of the fact that he was not hired on a particular night, but it sustained that finding as a violation of Section 8(a)(4) of the Act, a violation that was not charged or found by the Board.

workers, were anxious to join the Union and did so as soon as they were eligible under the Union's membership rules (R. 101, 104, 199).[2] Rather than Union membership being a condition of employment, having a regular situation in the industry was a condition of membership in the Union (R. 181, 187-8, 193-4).

The contracts that are the subject of the Board's order do not even contain the usual union shop clause, permitted by Section 8(a)(3) of the Act, requiring membership in the union 30 days after employment. Many non-union men work in the trade as "extras" or "casuals". Thus, union membership was and is not a condition of employment. As these non-union men advanced to more regular positions, they became eligible for Union membership and all who became eligible for membership joined the Union.

Randall, the charging party in the News case, wanted to join the Union (R. 43, 78), but he was not eligible because he was only a weekend worker who had a full time job outside the industry (App. 39). Randall filed his charge against the News following the promotion of 31 non-union extras to regular substitute status. These men were promoted and hired in preference to Randall because they had met an objective, non-discriminatory standard. All of these men who were promoted were then eligible for Union membership and all joined the Union. Membership in the Union was not a factor in their promotion and retention of their position with the News did not depend upon their joining the Union.

The News and other publishers signatory to the contract do not wish to retain the clause incorporating the

[2] "R." refers to the Joint Appendix filed in the Court of Appeals and "App." refers to the Appendix to the Board's petition.

ITU General Laws and would prefer to be free of the requirement that foremen must be members of the Union. However, the publishers have not succeeded in eliminating these clauses in collective bargaining. Such clauses are historic in the industry and they have been in existence since long prior to the passage of the Taft-Hartley Act in 1947. The publishers had never been in the position to contend, with authoritative support, that such clauses were illegal. The exception in the incorporation by reference clause, relating to laws "in conflict with federal law" was added shortly after the passage of the Taft-Hartley Act for the purpose of avoiding any violation of that Act. Until the ruling made by the Trial Examiner in this case, there had been no ruling by the Board or by any court that the provisions under attack by the Board in this case resulted in a violation of law. The publishers would eliminate these clauses, not because they are convinced that they are illegal under the present law, but because they are restrictive (R. 734-5).

When the Trial Examiner issued his Intermediate Report recommending the posting of notices of intent not to discriminate and the elimination of certain contract provisions, the News was quite willing to accept his recommendations and it filed no exceptions to the Intermediate Report (R. 732). In fact, the News posted a notice[3] in its mail room containing the substance of the notice recommended by the Trial Examiner. The Trial Examiner had not, how-

[3] A copy of that notice is annexed as Appendix A hereto. It was posted by the News on its own initiative, rather than in compliance with the recommended order, because the question of the enforcement of the order was being litigated.

ever, recommended the imposition of the *Brown-Olds*, "reimbursement of dues" remedy. When the Board imposed that remedy against the News, the News was forced to join with the Union in opposing enforcement of the Board's order.

The Court of Appeals has now denied enforcement of the Board's order, rejecting the Board's principal contention as to the alleged violations of the Act. The News does not question the correctness of the opinion of the Court of Appeals on the issues decided. From its selfish point of view, the News would prefer to let the case stand as decided by the Court of Appeals. It has much to lose and nothing to gain by any further review and, therefore, opposes the granting of the petition for a writ of certiorari.

However, it is expected that the respondent Union, a subordinate local of the ITU, will not oppose the Board's petition in this case because its sister locals in Worcester and Haverhill, Massachusetts, have petitioned for a writ of certiorari to the Court of Appeals for the First Circuit for a review of the principal question that the Board presents herein, which question was decided the other way by the First Circuit. Both the Board and the ITU are interested in sustaining their respective successful positions and, therefore, each is anxious for a review by this Court in both cases. The News has no such axe to grind.

However, the News wishes to protect itself from the "meat-axe"[4] remedy imposed upon it by the Board. There-

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[4] This term was used by a Trial Examiner to describe the *Brown-Olds* remedy. He said it was a "meat-axe remedy applied in a meat-axe fashion". *Ingalls Steel Constr. Co.*, Case No. 15 CA 1174, 15 CB 249, 15 CB 251, 44 LRR 408 (August 21, 1959).

fore, in the event that this Court grants the Board's petition in this case, the News urges that the question of the appropriateness of the "reimbursement of dues" remedy proposed by the Board in its order also be considered by this Court.

It is understood that the appropriateness of this "reimbursement of dues" remedy is before the Court in *Local 60, Carpenters* v. *NLRB*, No. 68, October Term, 1960, and in *NLRB* v. *Local 357, Teamsters*, No. 85, cert. granted June 27, 1960, 363 U. S. 837, but in those cases the inappropriateness of the remedy does not appear as clearly or to the same degree as in this case. This Court could sustain the Board's remedy in those cases, whereas, it is submitted, under the facts and circumstances presented in this case, the remedy imposed against the News could not be sustained.

The following circumstances relating to the imposition of the *Brown-Olds* penalty against the News appear from the record in this case:

1. The Board's order requires the News to "reimburse" dues it never received or even checked off to the Union.

2. Despite the clear mandate in Section 5(a) of the Administrative Procedure Act, 5 U. S. C. §1004, that an administrative agency shall notify all parties of "the matters of fact and law asserted" against them, there was never the slightest intimation in the pleadings, at the hearing, or in any of the briefs that the News was to be punished under the *Brown-Olds* theory.

3. The General Counsel conceded the good faith of the parties in the execution of the contract under attack

and never hinted or suggested at any stage of the proceedings that the case was an appropriate one for the harsh *Brown-Olds* remedy to be applied against the employer, until the oral argument before the Board when a Board member asked about the imposition of this remedy.

4. The News would be required by the Board's order to reimburse dues to about 230 mail room employees paid over a three-year period when it appears that most of these employees were members of the Union of long standing, many pre-dating passage of the Taft-Hartley Act, and where there is no evidence that anyone was coerced into joining the Union.

5. The members of the Union, who enjoyed the benefits of the contract and of Union membership during the period, would receive this windfall in the form of reimbursement of their dues paid to the Union.

6. The penalty proposed by the Board jointly and severally upon the News and the Union imposes a harsher burden upon the News than upon the Union. The News is required to "reimburse" one-half the dues which it never received, while the Union will "reimburse" one-half of the dues that it actually collected. Thus the Union will be able to retain the other half of the dues that it collected. In addition, the Union, which does not exist apart from all its members, can assess its members the amount of the reimbursement it must make to them, while the News will have no recourse but to pay its share of the penalty from its own funds.

In *Local 60, Carpenters* v. *NLRB*, *supra*, where the Seventh Circuit found the remedy to be appropriate in the circumstances of that case, the remedy was not imposed against the employer. In *NLRB* v. *Local 357, Teamsters*,

supra, the reimbursement of dues required by the Board's order related only to casual employees and not to all employees in the unit who are members of the Union as in this case. The News is concerned that the *Brown-Olds* remedy might be approved by this Court in those cases. Then, if the Board's petition is granted here without bringing up for review the question of the appropriateness of the remedy sought by the Board, and this Court reverses the Circuit Court on the question of the legality of the contract and the hiring practices, the Court of Appeals on remand might sustain the Board's proposed remedy.

CONCLUSION

Therefore, the News requests that the petition for a writ of certiorari be denied, or if it is granted, that the question of the appropriateness of the "reimbursement of dues" remedy also be reviewed by this Court.

Respectfully submitted,

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APPENDIX A

NOTICE TO ALL FOREMEN, EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN THE MAIL ROOM UNIT

Employment in the NEWS mail room unit is not conditioned upon union membership. No preference in employment is accorded to union members by reason of their membership in any union. Membership or non-membership in any union is not a factor in the control or maintenance of employment seniority or priority, apprenticeship training or competency testing. Employment in the mail room unit of the NEWS is based upon competency. Extras are hired on the basis of their position on lists posted in the mail room.

Foremen, who do the hiring, are not obligated to comply with any provision of the General Laws, Constitution, By-laws or any other laws of the INTERNATIONAL TYPOGRAPHICAL UNION or the NEW YORK MAILERS' UNION No. 6 which may call for closed shop or union preferential hiring and are hereby instructed that membership or non-membership in any union shall not be a factor in hiring, discharge, or tenure of employment.

So far as the Management of the News is concerned, all employees in the mail room are free to become, remain or refrain from becoming or remaining members of NEW YORK MAILERS' UNION No. 6, or any other labor organization, until such time as they are notified that this right has been affected by an agreement in conformity with Section 8(a)(3) of the National Labor Relations Act, as amended, providing for a union shop, and are free to exercise their rights guaranteed by Section 7 of the Act.

Continued membership in any labor organization by mail room employees is a matter of individual choice by

Appendix A

each employee. Employees in the mail room who remain members of NEW YORK MAILERS' UNION, NO. 6 are not bound to follow any provisions of the General Laws, Constitution, By-laws or any other laws of the International or local, which may call for closed shop or union preferential hiring.

The NEWS reserves the right to reject any applicant for employment referred by the union.

NEWS SYNDICATE CO. INC.
(Employer)

By /s/ P. B. STEPHENS, General Manager
(Name of Officer) (Title)

The above notice should remain posted for at least sixty (60) days and should not be altered, defaced or covered by any other material.

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No. 339

In the Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL–CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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prentice training program or by passing a competency test (R. 1291–1292; 533–534). The mail room foreman had the exclusive right under the contract to hire apprentices (*ibid.*). He also served under the contract as an "impartial examiner," who, together with the Union's membership committee, administered competency tests to prospective journeymen, who were invariably persons selected by the Union for induction into union membership (R. 1292; 204, 206, 215).

In practice, these programs were operated as follows: When the Union decided that more employment was available, it substantially curtailed the prescribed six-year apprenticeship program so that its apprentices could take the competency test (R. 707; 483–484). And, in the spring of 1956, in order to have its members perform the increased amount of work that had become available in the New York City newspaper mail rooms, the Union decided to accept into membership, and gave competency tests to, 125 non-union extras (R. 668–669; 123–124, 179–181).[*] The publishers, including the News, did not participate in the decision to enlarge the Union's membership or in arranging the method by which eligibility for membership, and consequently more regular employment, was to be determined. They merely furnished the Union with requested data (R. 669; 124–125).

At the News, the Union selected 31 of 60 employees on Union Foreman Rottenberg's list of the non-union extras who had received the greatest amount of extra

[*] Insofar as the record shows, no employee selected for induction into the Union ever failed to pass the competency test (R. 707, n. 5).

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work in 1954 and 1955 (R. 660; 180). Of these, 30 ranked below employee Burton Randall. They were all inducted into union membership on June 10, 1956, and were placed on the Union's priority list of regular work before Randall (R. 673–674; 48, 148–149). As a consequence, Randall, who shaped regularly on Friday and Saturday evenings, was required to work later hours and perform more difficult work, and lost overtime pay (R. 674; 20–23, 56).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that the News violated Section 8(a) (1) and (3), and the Union violated Section 8(b)(1)(A) and (2) of the Act, by their contract arrangements and by operating an unlawful closed shop and preferential hiring system. In the Board's view, the contract clause purporting to incorporate ITU General Laws "not in conflict with * * * federal or state law," evaluated in light of foreseeable employee reaction, in effect incorporated those portions of the Laws providing for a closed shop and delegating to the Union complete control over employment priority and seniority. Moreover, the Board found that the contract provisions vesting exclusive control over employment in union foremen, who were bound to follow the Union's laws, also evidenced an intent to operate under closed-shop conditions, and delegated exclusive control over hiring to the Union without the requisite safeguards established by the

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 339

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWS SYNDICATE COMPANY, INC., AND NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (R. 821–836) is reported at 279 F. 2d 323. The findings of fact, conclusions of law, and order of the Board (R. 635–695, 703–728, 751–760) are reported at 122 NLRB 818.

JURISDICTION

The opinion of the court of appeals was filed on May 20, 1960 (R. 821–836), and its decree was entered on June 8, 1960 (R. 836–837). The petition for a writ of certiorari was filed on August 18, 1960, and was granted on November 7, 1960 (R. 837).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> SEC. 8(a). It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or

the effective date of such agreement, whichever is the later * * * *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership * * *

QUESTIONS PRESENTED

The principal question presented is whether the Board may properly conclude that a collective bargaining agreement which purports to incorporate union working rules "not in conflict with * * * federal or state law," but does not particularize that the rules requiring union membership as a condition of employment are excluded as illegal, establishes a discriminatory hiring system which encourages union membership, in violation of the National Labor Relations Act.[1]

[1] If the Board's position on the principal issue be sustained, the following additional questions are presented:

(a) Whether the contract unlawfully encouraged union membership by delegating to the union power to control employment priority and seniority in accordance with the working rules.

(b) Whether the contract unlawfully encouraged union membership by vesting exclusive control over hiring in union foremen who were obligated to follow the working rules requiring employees to be union members.

(c) Whether the contract unlawfully encouraged union membership by vesting exclusive control over hiring in the union without adequate safeguards to assure employees that the power would be exercised without regard to union membership considerations.

The conclusion of the court below that the contract was not vulnerable on these grounds was so entwined with its holding on the principal question that a reversal of that holding would make appropriate a remand to that court for reconsideration of the subsidiary questions. It may be noted that two of these issues are presented in companion cases now before the Court, "(b)" in No. 340, and "(c)" in No. 64.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. *The contract and "General Laws" provisions.* Respondent Union, affiliated with the International Typographical Union (ITU), represents employees in the mail rooms of all New York City newspaper publishers. In December 1954, and again in 1956, respondent News Syndicate Company, Inc. (hereinafter called the News), publisher of the New York Daily News, signed collective bargaining contracts negotiated by the Publishers' Association of New York City and the Union. The publisher of the Wall Street Journal (hereinafter called the Journal) signed similar contracts with the Union.[2] Section 24 of the contract provided that "the General Laws of the International Typographical Union * * * not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein" (R. 641–642; 534).[3]

Section 5 of the contract limited mail room employment to "journeymen and apprentices" (R. 529). The ITU General Laws, however, provided that journeymen and apprentices must be ITU members and that each local union must establish a system of em-

[2] All New York City newspaper publishers affiliated with the Association subscribed to the 1954 and 1956 contracts (R. 527).

[3] The Laws referred to by the contracts in this case are those in effect during 1955, 1956 and 1957, all of which are essentially the same (R. 642, n. 5).

lead the employees to believe that they must join the union in order to secure and retain employment. Where, as here, the language has that effect, it violates the Act.

ARGUMENT

THE BOARD PROPERLY FOUND THAT THE "GENERAL LAWS" CLAUSE OF THE CONTRACT VIOLATED THOSE PROVISIONS OF THE ACT WHICH FORBID ENCOURAGEMENT OF UNION MEMBERSHIP BY DISCRIMINATION IN EMPLOYMENT

A. INTRODUCTION

Section 8(b)(2) of the Act makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate" in violation of Section 8(a)(3). The latter provision, in turn, makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." A "closed shop" contract, which requires employees to join the union as a condition of employment, clearly violates these provisions. It classifies employees into two groups—those who are union members and those who are not—and declares that only the former can obtain employment. Hence, standing alone and apart from its actual enforcement, a closed shop contract effects a discrimination in regard to hire which tends to encourage union membership.[11]

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[11] See *Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78, 81 (C.A. 2); *National Labor Relations Board* v. *National Maritime Union*, 175 F. 2d 686, 689 (C.A. 2), certiorari denied, 338 U.S. 954; *Eichleay Corp.* v. *National*

ployment priority and seniority among union members (R. 642–647; 554–558).[4]

[4] The relevant provisions of the General Laws are as follows (references are to the 1957 edition, the one reproduced in the printed record):

ARTICLE V—FOREMEN

Section 11. All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft and entitled to all privileges and benefits of membership.

ARTICLE VII—MACHINES

Section 1. * * * None but members [of the ITU] shall be permitted to operate, maintain and service any mailing machinery or equipment when used on work under the jurisdiction of the International Typographical Union. * * *

Section 2. In machine offices under the jurisdiction of the International Typographical Union, no person shall be eligible as a "learner" on machines who is not a member of the International Typographical Union. * * *

ARTICLE VIII—MACHINE TENDERS AND MACHINISTS

Section 1. All machine tenders and machine tenders and machinists, members engaged in the adjustment, repair, and maintenance of all mechanical devices used in the performance of * * * mailing room work, shall be members of the [ITU] * * *. All work pertaining to maintenance and care of machines is to be performed exclusively by machine tenders who are journeymen or apprentice members of the [ITU].

ARTICLE X—PRIORITY

Section 2. Subordinate unions shall establish a system for registering and recording priority standing of members in all chapels, which shall be conspicuously posted or

Whether a contract requires union membership as a condition of employment is not always apparent from the face of the contract. That is, although the contract itself may not specifically impose such a requirement, other circumstances may make plain that it nonetheless exists. Thus, in *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 193 F. 2d 782 (C.A. 7), affirmed on another point (see n. 21, *infra*), 345 U.S. 100 (the earlier litigation involving the International Typographical Union, which is described more fully pp. 28–32, *infra*) the imposition of closed-shop conditions was inferred from the fact that the union first insisted that there be no contract but only a condition of employment plan under which union members could quit work if nonunion employees were employed, and later offered the alternative of a contract cancellable upon 60 days' notice.[12]

The basic question in this case is whether the Board could properly conclude that the "General Laws" clause of the contract here had a similar effect, *i.e.*, imposing the requirement that employees be union members in order to obtain employment. Although the contract defines "journeyman" without regard to union membership considerations (R. 533), the ITU General Laws require that he be a member of the ITU

Labor Relations Board, 206 F. 2d 799, 803 (C.A. 3); *National Labor Relations Board* v. *F. H. McGraw*, 206 F. 2d 635, 641 (C.A. 6); *Katz* v. *National Labor Relations Board*, 196 F. 2d 411, 415 (C.A. 9).

[12] See also *National Labor Relations Board* v. *National Maritime Union*, 175 F. 2d 686, 688–689 (C.A. 2), certiorari denied, 338 U.S. 954.

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Section 4 of the contract provided that mail room superintendents, foremen, and assistant foremen must be members of the Union, and Sections 20a and 20b vested exclusive control over mail room employment in the foremen (R. 648–649; 528–529, 532–534). The Union's Constitution and Bylaws imposed on all members the obligation to observe all union rules, which include those restricting employment to union members (R. 650–651; 539–546, 544–558).

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kept in a place within the chapel accessible to members at all times. The priority standing of a member shall stand as recorded.

Section 5. Any member engaged to serve the International Typographical Union, a subordinate union or to perform work in the interest of the organized labor movement, or any member incapacitated by illness, shall not be deprived of priority standing while so employed or so incapacitated. Such member shall employ while absent the priority substitute competent to perform the work if one is available. The situation holder shall not suffer loss of situation or priority in the event such a substitute is not available. After thirty calendar days the situation shall be filled by priority substitute and considered in the category of a new situation. Upon reporting for duty full priority rights shall be restored.

Section 6. Available priority substitute competent to perform the work must be employed on any new situation created because of the absence of a situation holder from his or her situation for more than thirty calendar days, and whose priority is protected under the provisions of other sections of I.T.U. laws or contracts: *Provided*, Should a substitute with greater priority become available such substitute shall be placed on said situation: *Provided, further*, Local unions may establish by contract, for the purpose of avoiding multiple changes in preferred shifts and starting times, for the employment of the available priority substitute after thirty calendar days and continuing to but not more than ninety calendar days from absence of situation holder.

2. *The hiring practices.* The Board's findings as to the respondents' hiring practices[5] are as follows:[6]

The foreman initially selected for an evening's work union members whose names appeared on lists furnished by the chapel chairmen or job stewards. The names of fulltime employees, known as "regular situation holders," appeared on one list (R. 664; 14–15, 142, 546–549). The second list contained the names of "regular substitutes"—those who substituted for regular situation holders and were first selected for extra work when the size of the paper required the employment of additional mailers (*ibid.*). The foreman hired from these lists in priority order based on the date when the union member had deposited his union card with the chapel chairman (R. 664; 142–143, 171, 261–264). The foreman next hired union members from other papers who "shape the shop," taking first men who had not worked five days that week and then men who had already worked that period (R. 665; 14, 121, 143–144). Finally, if extra help were still needed after the supply of union men had been exhausted, the

[5] Although the Board's findings were, in large part, set aside by the court of appeals, the court's view of the facts appears to be dependent upon its initial premise, which we submit is erroneous, that the contract did not "incorporate" the closed shop provisions of the ITU general laws.

[6] Substantially the same hiring procedure was in effect in the mail rooms of all New York City newspaper publishers (R. 663; 123).

foreman hired non-union shapers (R. 1230; 15, 122, 144).[7]

It does not appear that the mail room foremen at the News and Journal ever deviated from this system of employment priority. Thus, while some non-union shapers had worked in the News mail room for over 10 years, performing virtually all operations, the foreman nevertheless required that outside card men, even though they had never before worked at the News, be hired before any non-union shaper (R. 666; 17–19). When employees at the News protested against the hiring of unusually large numbers of outside card men, who had shaped on the eve of a holiday for the double pay involved, Superintendent Rottenberg, the Union foreman in charge of the mail room, stated that he could do nothing about it because union men had to go to work ahead of the non-union men (R. 667; 93). Similarly, when vacation replacements were needed at the Journal during the summer of 1956, Foreman Every authorized the chapel chairman to get union men from other shops, who were then hired before non-union men who regularly shaped for work, including employee Julius Arrigale (R. 666; 405).

The Union also administered the apprenticeship and competency programs so as to prefer its members. Under the contract, a non-union mail room worker could gain journeyman status, and so qualify for regular employment, only by completing a six-year ap-

[7] While a seniority list for non-union shapers was not part of the Union's priority system, the foremen at the News and Journal maintained such lists based on the first date of employment at their mail rooms (R. 665–666; 144, 162).

closed shop was imposed mainly by the insertion of the ITU General Laws into collective bargaining contracts.

The origin and function of the General Laws have been described as follows (*International Typographical Union*, 86 NLRB 951, 970–971):

> The General Laws are traceable in their origin to the original custom of the Union—prevailing generally before collective bargaining contracts were first negotiated about 1886—of adopting scales of prices and operating rules of conduct, setting the conditions on which union members agreed to sell their services. As developed in more recent years, the "laws" constitute a union code of operating rules and minimum working conditions relating to the operation of ITU-organized composing rooms wherever located. * * *
>
> The requirements of the General Laws are considered by the ITU to represent the floor upon which the structure of collective bargaining is erected. Locals bargain for wages and economic conditions not covered by the laws, or only partially covered; and where minimum conditions are prescribed, they may bargain for more than the minimum. But they may not, without contravening the "laws," bargain away

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ceedings involving the ITU. See *International Typographical Union (American Newspaper Publishers Association)*, 86 NLRB 951, 968; *Chicago Typographical Union No. 16 (Chicago Newspaper Publishers Association)*, 86 NLRB 1041, 1056; *American Newspaper Publishers Ass'n v. National Labor Relations Board*, 193 F. 2d 782, 787–796 (C.A. 7); *Evans v. International Typographical Union*, 76 F. Supp. 881, 890–893, 81 F. Supp. 675 (S.D. Ind.). And see the testimony of ITU President Randolph at R. 216 ff.

Board in *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 119 NLRB 883* (R. 646–647, 662–663, 705–709).

As to practice, the Board found that mail room foremen actually hired pursuant to a priority system based upon the laws and constitutions of the ITU and the respondent local union, and that the apprenticeship and competency systems established in the contract were so operated as to give unlawful preference for jobs to union members (R. 672–673, 705–708). In addition, the Board found that two non-union employees, Burton Randall at the News, and Julius Arrigale at the Journal, were discriminatorily denied employment opportunities as a direct result of the unlawful preferential hiring system in effect at the mail rooms of the News and the Journal (R. 675–677, 679–680).

In relevant part, the Board's order (R. 712–719, 728, 752–753) requires the News to cease and desist from its violations of Section 8(a) (1) and (3), and from in any other manner interfering with, restraining, or coercing employees in the exercise of their rights under the Act. Affirmatively, the order requires the News to specify in its current contract with the Union that the provisions of the ITU General Laws found illegal by the Board are not incorporated in the contract, and to indicate which provisions of the Laws are incorporated and operative; to notify mail room employees that they are not

* The Board's *Mountain Pacific* principle is before the Court in *Local 357, Teamsters* v. *National Labor Relations Board*, No. 64, this Term.

bound to follow provisions of the Laws which call for a closed shop or union preferential hiring; to reimburse all employees and former employees in the mail room for dues and assessments paid to the Union for a period beginning six months before the date of the filing and service of the charges against it; and to post an appropriate notice.

In parallel terms, but extended to cover all New York City newspaper publishers, the order requires the Union to cease and desist from its correlative violations of Section 8(b) (1)(A) and (2) of the Act, and to take substantially the same affirmative action as the News.

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals denied enforcement of the Board's order. The court held that the clause in the contract purporting to incorporate only ITU General Laws "not in conflict * * * with federal or state law" must be taken at face value, and hence the contract could not be deemed to include the closed-shop provisions in the Laws. It distinguished its prior decision in *Red Star Express Lines* v. *National Labor Relations Board,* 196 F. 2d 78, on the ground that there is a difference between specifically setting forth illegal union-security provisions in the contract and then purporting in an addendum to suspend any "illegal" clauses (the situation in *Red Star*), and incorporating only the "legal" provisions of union rules some of which are illegal (the situation here). In the court's view, the "natural and foreseeable conse-

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quence" of the latter type of provision, unlike that of the former, would not be to encourage union membership (R. 825–826).

The court further found that the contract did not delegate to the Union exclusive control over seniority or hiring, and was not otherwise unlawful. The court also rejected the Board's finding that respondents, in practice, maintained and enforced unlawful closed-shop and preferential employment conditions, and that the apprenticeship and competency systems established in the contract were so operated as to give unlawful preference for jobs to union members. In the court's view of the evidence, the hiring practices were based on valid criteria of competency and dependability and only coincidentally resulted in union members being hired first. Finally, based on these findings as to hiring practice, the court concluded that Randall and Arrigale had not been discriminatorily denied employment opportunities (R. 834–835).[10]

SUMMARY OF ARGUMENT

A. A "closed-shop" contract, which conditions employment upon union membership, violates Sections 8(a)(3) and 8(b)(2) of the Act because it classifies employees into two groups, those who are union members and those who are not, and declares that only

[10] The court did, however, agree with the Board's finding that employee Burton Randall at the News was denied one night's work because he filed an unfair labor practice charge against respondents. But, since this matter covered "so small a portion" of the Board's order, the court denied the petition for enforcement *in toto* and left it for the Board, "if so advised," to enter an order consistent with the court's opinion (R. 836).

the former can obtain employment. Therefore, even apart from its actual enforcement, such a contract effects a discrimination in regard to hire which tends to encourage union membership.

The issue here is whether the Board may properly conclude that a collective bargaining agreement which purports to incorporate union working rules "not in conflict with * * * federal or state law," but which does not specify that the rules which require union membership as a condition of employment are excluded as illegal, establishes a closed shop hiring system. That is, although the contract here defines "journeyman" without regard to union membership considerations, the ITU General Laws require that he be an ITU member in good standing. The contract specifically incorporates those General Laws "not in conflict with * * * federal or state law." It is the Board's position that, in view of the ITU's past attempts to maintain closed shop conditions in shops within its jurisdiction and the role played by the General Laws in this effort, the contracting parties could reasonably foresee that, with the vague exclusionary clause, the employees would be unable to separate the legal from the illegal provisions of the Laws and would consequently interpret the contract as incorporating all of the Laws, including those requiring union membership as a condition of employment. Accordingly, the Board considered that the situation is just as though the parties intended to, and did, incorporate into their contract the closed shop provisions of the General Laws. See *Radio Officers'*

Union v. *National Labor Relations Board,* 347 U.S. 17, 45.

B. From its inception until the enactment of the 1947 amendments to the Act, the ITU avowedly operated on a closed shop basis. The closed shop was imposed mainly by the insertion of the ITU General Laws into collective bargaining contracts. The General Laws achieved this objective by provisions restricting work in various occupational categories to ITU members; requiring the foreman to be a union member and to be vested with sole authority in the composing room to hire and fire; obligating the foreman to hire in accordance with a priority and seniority system for union members; and giving the ITU control over the apprentice system.

When the Act outlawed the closed shop in 1947, the ITU nevertheless sought to continue operating under that condition. It did not alter the closed shop provisions of the General Laws, but adopted a no-contract policy under which its members, instead of working under a contract, would work only under conditions specified by the Union. Later, the ITU offered the publishers the alternative of a contract, which was subject to cancellation by either party on 60 days' notice. The Board found, and the courts agreed, that these proposals were devices designed to compel employers to continue operating under closed shop conditions, and thus were violative of Section 8(b)(2) of the Act. See *American Newspaper Publishers Ass'n* v. *National Labor Relations Board,* 193 F. 2d 782 (C.A. 7), affirmed on another point, 345 U.S. 100.

C. The ITU then adopted the procedure which is at issue here. It resumed its practice of entering into a one-year contract, with the contract containing the traditional clause incorporating the General Laws. However, the qualifying phrase in that clause, "not in conflict with this contract," was expanded to read, also not in conflict with "law." The provisions of the Laws remained essentially the same. The ITU never furnished its locals or its members a specific list of which of the General Laws were in conflict with the Act and thus suspended, nor did it instruct its foremen as to which of their obligations under the General Laws and as union members were in conflict with the Act and no longer binding in the discharge of their hiring function.

In light of the history showing that the General Laws have been the principal means by which the ITU has achieved and maintained closed shop conditions, that its members were carefully schooled in the details and nuances of the Laws, and that, even after the Act's ban on the closed shop, the ITU sought by numerous devices to maintain closed shop conditions, the contracting parties could reasonably expect that the employees would attribute little significance to the addition of the general phrase "not in conflict with law," and would tend to view the Laws clause as serving its traditional function of incorporating the closed shop provisions of the General Laws no less than the other provisions. An "employee cannot be expected to predict the validity or invalidity of particular clauses in the contract, and will feel compelled to join the union where a union-security clause of question-

able validity exists, if only as a hedging device against a possible future upholding of the clause." *National Labor Relations Board* v. *Gaynor News Co.*, 197 F. 2d 719, 723–724 (C.A. 2), affirmed on another point, 347 U.S. 17. The individual employee or foreman, if he noticed the exclusionary language at all, would interpret it, not as requiring him to determine the legality of particular provisions of the General Laws, but merely as indicating that at some future date a judicial determination might be made that certain of the Laws could not have been applied. Meanwhile, he would continue to regard all provisions of the Laws, including those requiring ITU membership as a condition of employment, as in effect.

Hence, in the Board's view, employees who were already ITU members would be encouraged to retain that membership, prospective employees would either be prompted to acquire such membership or be deterred from seeking employment, and, in hiring and firing, the foreman would similarly be governed by union membership considerations. Indeed, the conduct of the hiring in this case shows that the contract was in fact so interpreted. Hiring at both the News and the Journal proceeded in accordance with the priority system specified in the ITU Laws, with preference being given to union members.

D. The distinction drawn by the court below between the clause here and that involved in *Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78 (C.A. 2), is without substantial basis. From the standpoint of the employees and in the context of practical industrial realities, no meaningful

distinction can be made between setting out questionable union-security provisions in the contract and then purporting to suspend them if they are "illegal" (the situation in *Red Star*), and incorporating by reference only the "legal" provisions of union rules which include questionable union-security provisions (the situation here). In either case the burden of determining legality is shifted to the employee. In the Board's view, employees in an industrial plant cannot be expected to and would not play the role of lawyer or judge, but would instead tend to comply with a doubtful provision and leave the determination of its ultimate validity to an appropriate tribunal.

On no firmer footing is the ITU's contention that its technique of incorporating General Laws to the extent "not in conflict with law" is privileged because the ITU represents employees in some plants where the closed shop is legal, and the complexities of industry make it difficult to particularize the circumstances wherein the Laws would or would not be legal. Assuming a certain administrative burden in differentiating the applicable Laws in given circumstances, this does not justify an incorporation technique which infringes the Section 7 rights of employees in those plants where closed shop provisions are illegal.

Nor does the Board's holding here constitute an unwarranted intrusion into the substantive aspects of the collective bargaining process. The Act permits the parties to draft their union-security provisions in whatever form they desire so long as the foreseeable effect of the language chosen is not to

in good standing (see n. 4, *supra*). The contract further provides that the General Laws "not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein" (R. 534). It is the Board's position that, in the light of the ITU's past efforts to maintain closed shop conditions and the role played by the General Laws in that effort, the contracting parties could reasonably foresee that, without a specification of which laws were excluded, the employees would regard all of them as operative, including the provisions requiring journeymen to be union members. Thus, the parties must be deemed to have intended to incorporate those provisions. See *Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 45. The situation, therefore, is just as though the contract had specifically imposed closed shop conditions.

The Board's interpretation of the effect of the "General Laws clause" was rejected by the court below,[13] but was accepted by the First Circuit in *International Typographical Union (Haverhill Gazette)* v. *National*

[13] See also *Honolulu Star-Bulletin* v. *National Labor Relations Board*, 274 F. 2d 567 (C.A.D.C.). There, however, the court also relied upon an express provision of the contract that. "The term 'journeymen' and 'apprentices' shall in no way be understood to apply exclusively to members of the * * * Union" (274 F. 2d at 569), a disclaimer not included in the contract here or in No. 340. And, to resolve any remaining ambiguity, the court further relied upon a practice—again not present here or in No. 340—of hiring nonunion men as journeymen.

Cf. *Lewis* v. *Quality Coal Corp.*, 270 F. 2d 140 (C.A. 7), certiorari denied, 361 U.S. 929; *Perry Coal Co.* v. *National Labor Relations Board*, C.A. 7, December 2, 1960, 47 LRRM 2208.

Labor Relations Board, 278 F. 2d 6, certiorari granted, No. 340, this Term. See also *Albert* v. *International Typographical Union,* 161 F. Supp. 427 (D. Mass., Aldrich, J.). We shall show that the conclusion reached by the Board is a reasonable one and consequently was entitled to stand.[14]

B. THE HISTORY OF THE ITU'S EFFORTS TO MAINTAIN CLOSED SHOP CONDITIONS [15]

1. *The situation prior to the 1947 amendments to the Act*

From its inception about 100 years ago until the enactment of the 1947 amendments to the Act, the ITU avowedly operated on a closed shop basis. The

[14] This case and the companion No. 340 have been set down for argument following Nos. 64 and 68 (R. 837). Both of these cases likewise involve illegal hiring practices. In No. 68, as here, the practice is illegal because, in the Board's view, it conditions employment on union membership. Assuming there is a substantial basis for the Board's view (which is challenged here but not in No. 68, where the only contest is over the propriety of the reimbursement remedy), it is readily apparent, as we have shown p. 20, *supra*, that such a hiring practice effects a discrimination in employment which tends to encourage union membership. In No. 64, on the other hand, the practice is illegal because, although the discrimination in employment does not turn on union membership, it nonetheless tends to encourage such membership in that the union has been delegated exclusive control over hiring without adequate safeguards to insure that this power will be exercised without regard to the employee's union status. In short, the basic question here is whether the contract in fact conditions employment upon union membership, whereas in No. 64 it is whether the discrimination implicit in according jobs only to employees who have been referred by the union tends to encourage union membership, absent the Board's *Mountain Pacific* (119 NLRB 883, 893) safeguards.

[15] The following account is based primarily on the facts found, by the Board and the lower courts, in the earlier Board pro-

> what the "laws" provide. * * * It has long been traditional in the industry to consider the ITU General Laws as a part of every contract; indeed the obligation to observe pre-existing ITU laws was expressed in Nation-wide abitration agreements between the ITU and the [American Newspaper Publishers Association] in force from 1901 to 1922. The ITU has steadfastly maintained the position that its laws were an internal union matter, not subject to arbitration, and it was over this issue largely that relations between the ITU and the ANPA were broken in 1944. Since that time the ITU has declined to approve any local contract which did not expressly or in substance provide:
>
> "That the General Laws of the International Typographical Union in effect [January 1 the preceding year], not in conflict with this contract, shall govern the relations of the parties on conditions not specifically enumerated herein."

The General Laws imposed closed shop conditions by these means:

First, the Laws contained a number of clauses restricting work in various occupational categories to ITU members. Typical of these is the provision (Article V, Section 11[16]) that (R. 555):

> All persons performing the work of foremen or journeymen, at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their

[16] References are made to the 1957 edition of the General Laws, which is in the printed record.

craft and entitled to all the privileges and benefits of membership.

Second, the Laws not only required that the foreman be a union member, but also provided (Article V, Section 1) that he "is the only recognized authority" in the composing room, thereby vesting him with exclusive power to hire and fire. Hence job applicants were required to seek employment through the union foreman, who, like other ITU members, took an oath, upon admission to the union, "to support the [ITU] laws, regulations and decisions," and "to use all honorable means within my power to procure employment for members of the [ITU] in preference to others." [17]

Third, the General Laws (Article V, Section 1) obligated the foreman to hire in accordance with the priority system set forth therein. Under this system, local unions registered the length of continuous service in a printing shop of each of its members. This schedule was then used by the foreman for the purpose of hiring and laying off employees, preference being given to those with the most priority. In practice, the system operated as follows (*International Typographical Union,* 86 NLRB 951, 973):

> Each office has a group of regular situation holders who work steadily and another group who appear for extra or substitute work. At each chapel (the local union's office unit) there is maintained a slipboard (priority board) which is the property of the union and subject

[17] The preference clause was deleted from the oath in 1953 (R. 234–235).

> to its exclusive control. A union member seeking work at that particular chapel * * * has his card registered at the foot of the slipboard, after clearing with the Union's chapel chairman. When a situation vacancy occurs, or an extra position is to be filled, the foreman selects the person with the highest priority who is competent to fill the job. * * * [I]n the event of temporary absence [of a regular situation holder], he selects himself, without clearing with the foreman, a competent substitute from the slipboard to fill his place.

The system provided no method whereby a non-union printer could be hired as such; he would first have to be admitted to membership in the Union.

Finally, the General Laws established a union-controlled apprenticeship system. Under the Laws, a person could become an apprentice only after being approved by the local union, and passing technical and physical examinations (Article I, Section 4). At the end of the first year, if the apprentice proved competent, he was admitted into the Union as an apprentice member, and, in addition to his job training, he began a course of study prepared and administered by the ITU. The lessons in this course included the subject of trade unionism as well as the principles and techniques of printing (Article I, Sections 3, 10). Supervision of the entire apprentice program of study and training on the job was undertaken by the union foreman and a committee on apprentices, which was provided for by the local union and in which employers were encouraged to participate (Article I, Sections 14 and 15). At the completion of six years, and after

passing a final examination, the apprentice was eligible to become a journeyman printer and a union member in full standing (Article I, Section 1).[18]

2. *The ITU's response to the 1947 amendments*

The Taft-Hartley amendments to the Act, which became effective in August 1947, outlawed the closed shop. However, even before the amendments took effect, the ITU indicated that it had no intention of giving up its traditional closed shop practices.

Thus, in the March 1947 issue of the ITU Journal, its members were told, with respect to the pending legislation:[19]

> For nearly a century * * * the International Typographical Union operated on the closed shop principle. It has been the accepted practice in the printing industry * * *. It will continue to so operate * * *.
>
> * * * It is intolerable and unthinkable that union printers would work with non-union men under conditions fostered by the "open shop." When confronted with that choice members of the I.T.U. will do what comes naturally.

Similarly, in May 1947, ITU President Randolph told a Congressional committee considering the amendments that:

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[18] An applicant could be admitted to membership without serving an apprenticeship if able to pass a competency test administered by the Union (ITU bylaws, Article XVI, Section 3).

[19] This and the quotations which follow are set forth in the opinion of the Seventh Circuit in *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 193 F. 2d 782, 789–790.

> At no time has the International Typographical Union or any local thereof operated on other than a closed shop basis and whether it can make contracts thereof or not, it will continue to function on that basis.

In the July 1947 issue of the ITU Journal, President Randolph repeated:

> * * * So far as the Typographical Union is concerned, we do not intend to have any of our rights and prerogatives, enjoyed for a hundred years, set aside by laws adopted under the lash of party leadership in Congress inspired by representatives of big business * * *.

And, in the August 1947 issue, he added:

> The theory of the Taft-Hartley Law is that now an employer can "shoe horn" some non-union men into a union composing room and be protected against our men walking out. That is theory only. The condition is that our members will walk out.

Accordingly, when the Taft-Hartley ban on the closed shop took effect, the ITU did not alter the closed shop provisions of the General Laws or notify its members that they were no longer effective. Instead, it advised its locals to terminate existing contracts and submit to employers a proposal whereby employees would no longer work under a written contract but pursuant to specified Conditions of Employment. The Conditions, *inter alia*, were that members could seek other employment or refuse to work whenever they became dissatisfied with conditions in the shop; they would work only under direction of a foreman who was a union member and vested with full

control over hiring and firing; and the composing room would be operated under the laws of the ITU. The publishers, believing that this no-contract proposal violated the amended Act, filed unfair labor practices charges with the Board. Thereupon, the ITU offered the publishers the alternative of a contract, which was subject to cancellation by either party on 60 days' notice. The contract, *inter alia,* provided that the General Laws of the ITU, not in conflict with law or this contract, would govern relations between the parties; the union could unilaterally make and enforce the rules under which its members might seek or accept employment; and any refusal of union members to work with non-union employees would not constitute a breach of the agreement.

The General Counsel of the Board issued unfair labor practice complaints, alleging, *inter alia,* that the ITU's no-contract and 60-day contract proposals were merely devices for perpetuating closed shop conditions in violation of the amended Act, and that certain clauses of the proposed contract, including those mentioned above, in themselves manifested an intent to operate under such conditions. The District Court, after hearing, found reasonable cause to believe that the charges were true, and issued an injunction under Section 10(j) of the Act, pending a final Board determination. The injunction enjoined the Union, pending a final Board determination, from continuing its no-contract and 60-day contract proposals, and from giving effect to any of the ITU laws which would cause employees to be discriminated against

because of non-membership in the Union. *Evans* v. *International Typographical Union*, 76 F. Supp. 881 (S.D. Ind.), February 25, 1948. Thereafter, the Union was adjudged in contempt of the injunction, by distributing new form contracts containing competency and apprenticeship clauses which discriminated against non-members of the ITU. *Evans* v. *International Typographical Union*, 81 F. Supp. 675 (S.D. Ind.), October 14, 1948.[30]

On October 28, 1949, the Board issued its decision and order in the cases. *International Typographical Union (American Newspaper Publishers Association)*, 86 NLRB 951; *Chicago Typographical Union No. 16 (Chicago Newspaper Publishers Association)*, 86 NLRB 1041. It found, *inter alia*, that the ITU's no-contract and 60-day contract proposals were maneuvers designed to compel employers to continue operating under closed shop conditions, and were thus violative of Section 8(b)(2) of the Act. Believing that a remedy against these practices would be sufficient to deter the ITU from pursuing its illegal objective, the Board found it unnecessary to decide the further question of whether the clauses in the proposed contract, in themselves, amounted to the imposition of closed shop conditions (see 86 NLRB at

[30] The court found no contempt with respect to the inclusion of a foreman clause, providing that hiring shall be done by the foreman who shall be a union member. In so concluding, the court was influenced by the fact that "there has been no clear and convincing proof that where an employer has objected to [the foreman] clause the respondents have refused to approve a proposed contract, although otherwise acceptable, because it did not" contain that clause (81 F. Supp. at 685).

1044). Accordingly, the Board ordered the Union to cease and desist from the unfair labor practices found. On December 27, 1951, the Board's action was sustained by the Seventh Circuit. *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 193 F. 2d 782.[21]

C. VIEWING THE "GENERAL LAWS" CLAUSE OF THE CONTRACT HERE AGAINST THIS BACKGROUND, IT WAS REASONABLE FOR THE BOARD TO CONCLUDE THAT THE PARTIES MUST BE DEEMED TO HAVE CONTEMPLATED A CONTINUATION OF THE CLOSED SHOP CONDITIONS, AND THAT THE EMPLOYEES WOULD SO UNDERSTAND

After the litigation described above, the ITU adopted the procedure which is at issue here and in No. 340. It resumed its practice of entering into a one-year contract, with the contract containing the traditional clause incorporating the General Laws of the ITU. However, the qualifying phrase in that clause, "not in conflict with this contract," was expanded to include the terms "law" or "federal or state law" (see R. 239, 245). But, apart from adding a comparable general proviso to the Laws themselves,[22] essentially no changes were made therein. They con-

[21] Also involved in the case was the question of whether the ITU's insistence upon "setting bogus" violated Section 8(b)(6), the featherbedding provision of the Act. The Board held that this section was not violated, and the Seventh Circuit agreed. This aspect of the case was involved in *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 345 U.S. 100, wherein this Court sustained the view of the Board and the Seventh Circuit.

[22] Article XIV, Section 1, added to the General Laws in 1953, provides that, where the observance of any of its provisions "would be contrary to public law, they are suspended so long as such public law remains in effect" (R. 246).

tinued to contain the provisions restricting work in various occupational categories to ITU members; requiring the foreman to be a union member and to be vested with sole authority in the composing room (and, indeed, the contract contained specific clauses reemphasizing this point, see p. 7, *supra*); obligating the foreman to hire in accordance with the priority system for union members; and giving the Union control over the apprentice system (pp. 27–28, *supra*, and G.C. Exh. 20, Article I).

Moreover, the ITU never undertook to give its locals or its members a specific list of which of the General Laws were in conflict with the Act and thus suspended (R. 276–278). Nor did the Union instruct its foremen as to which of their obligations under the General Laws and as union members were in conflict with the Act and were no longer binding in the discharge of their hiring function (R. 284). Indeed, as the facts in No. 340 show, when, in the course of bargaining for a new contract, the publisher sought to have the Union particularize in the contract which of the General Laws were regarded as still operative, the Union declined to do so, insisting upon the vague type of laws clause used here.

In the light of the history (pp. 23–32, *supra*) showing that the General Laws have been the principal means by which the ITU has achieved and maintained closed shop conditions, that its members were carefully schooled in the details and nuances of the Laws, and that, even after the Act's ban on the closed shop, the ITU sought, by numerous devices, to maintain closed shop conditions, the contracting parties could

reasonably expect that the employees would attribute little significance to the addition of the general phrase "not in conflict with law" to the Laws clause of the contract, and tend to view that clause as serving its traditional function of incorporating the closed shop provisions of the General Laws no less than the other provisions. That is, it would be unlikely that an employee or a foreman would go over the voluminous ITU Laws, provision by provision, and attempt to determine what provisions were likely to be illegal and thus no longer operative. Instead, being aware of no specific change in the Laws themselves, they would tend to assume that they were still incorporated in the contract and controlled employment, as in the past, at least until an appropriate tribunal had ruled otherwise. An "employee cannot be expected to predict the validity or invalidity of particular clauses in the contract, and will feel compelled to join the union where a union-security clause of questionable validity exists, if only as a hedging device against a possible future upholding of the clause." *National Labor Relations Board* v. *Gaynor News Co.*, 197 F. 2d 719, 723–724 (C.A. 2), affirmed on another point, 347 U.S. 17.

In short, the individual employee or foreman, if he noticed the exclusionary language "not in conflict with law" at all, would interpret it, not as requiring him to make a determination of the legality of particular provisions of the General Laws, but as merely indicating that, at some future date, there might be a judicial determination that certain of the Laws could not have been applied. Meanwhile, he would

continue to regard all provisions of the Laws, including those requiring membership in the ITU as a condition of employment, as in effect. Hence, employees who were already ITU members would be encouraged to retain that membership, prospective employees would either be prompted to acquire such membership or be deterred from seeking employment, and, in hiring and firing, the foreman would similarly be governed by union membership considerations.

Indeed, because the union security provision of a contract has an impact on employees apart from its enforcement (p. 20, *supra*) and because employees are not likely to read the contract provision as a lawyer would, but instead would resolve any ambiguity in favor of complying, the Board, even without the history here, has consistently taken the position that the effect of an unlawful union security requirement is not aborted by a general clause which purports to suspend it insofar as it is unlawful.[23] And the courts, including the court below, have consistently sustained the Board's holding in such cases. *Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78, 80–81 (C.A. 2); *National Labor Relations Board* v. *Gaynor News Co.*, 197 F. 2d 719, 723–724 (C.A. 2), affirmed on another point 347 U.S. 17; *National Labor Relations Board* v. *Gottfried Baking Co.*, 210 F. 2d 772, 780 (C.A. 2); *National Labor Relations Board* v. *Shuck Construction Co.*, 243 F. 2d 519, 521 (C.A.

[23] *Lykens Hosery Mills, Inc.*, 82 NLRB 981, 982–983; *Reading Hardware Corp.*, 85 NLRB 610, 611; *Red Star Express Lines*, 93 NLRB 127, 128, enforced, 196 F. 2d 78 (C.A. 2). See also *Keystone Coat, Apron & Towel Supply Company*, 121 NLRB 880. Cf. *Schaefer Body, Inc.*, 85 NLRB 195, 196; *Barium Steel and Forge, Inc.*, 88 NLRB 564.

9); *National Labor Relations Board* v. *Broderick Wood Products Co.*, 261 F. 2d 548, 557–558 (C.A. 10).[24]

The record here demonstrates the validity of the Board's view of the effect of the "Laws" clause. Superintendent Rottenberg and Foreman Every, who did the hiring at the New York Daily News and the Wall Street Journal, respectively, both testified that they abided by the ITU "book of laws" (R. 141, 152, 371). Every further testified that he had never received instructions from the publisher respecting his duties as foreman, and hence only knew those duties "from the union point of view" (R. 392, 417). Moreover, Every indicated that he understood his obligation to live up to the ITU rules to mean that he should "give a break to union members before giving a break to non-union members" (R. 394; see also 411–415), and that, as far as he knew, there was nothing in the Union's rules that conflicted with the Taft-Hartley Law (R. 395).[25]

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[24] As we show, pp. 39–41, *infra*, there is no merit to the attempt of the court below to distinguish these cases on the ground that there the illegal provision was specifically set out in the contract, whereas here it was contained in union rules which were incorporated into the contract insofar as "not in conflict with law."

[25] The following is a verbatim account of that testimony (R. 394–395):

> Q. [by Union counsel] Do you remember * * * provisions of laws and the constitution of the union requiring a member of the union and a foreman to give a break to union members before giving a break to non-union members? * * *
>
> A. [by Foreman Every] Yes, I recall something.
>
> Q. When you say you attempt to live up to the constitu-

Accordingly, hiring at both the News and the Journal proceeded in accordance with the priority system specified in the ITU Laws, with preference being given to union members. Thus, as shown pp. 8–9, *supra,* the chapel chairman or union steward prepared lists of "regular situation holders" and "regular substitutes," which were limited to union members (R. 147, 374), and placed them in the order in which they deposited their union card with the chapel chairman. The foreman first hired from these lists, in priority order. If, after exhausting the lists, men were still needed, he then turned to those "shaping the shop." From these, the foreman would first select "outside card men," *i.e.,* union members from other shops who were looking for extra work, and only thereafter would he hire non-union men. An outside card man would be preferred over a non-union man even though the latter was more experienced in the work of the shop.[26]

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tion and laws, do you attempt to live up to that obligation too?

A. Yes.

* * * * *

Q. Wherever there is or may be a conflict between the Taft-Hartley Law, or any other law of the land, and the requirements of the constitution and general laws, which do you understand are to prevail in your carrying on your duties as foreman?

A. Well, the Taft-Hartley Law is probably recognized as the main thing. But there is nothing in our books contrary to that that I know about.

[26] The court below overlooks certain essential facts in concluding (R. 832) that, since all of the union men were journeymen and the non-union men were not, the hiring procedure could be explained on the basis of "nondiscriminatory con-

In sum, in view of the history of the ITU's efforts to maintain closed shop conditions and the role played by the General Laws in this effort, the Union and the publishers had reason to believe that, without specifying what provisions of the Laws were deemed illegal and thus excluded, the employees and the foremen would tend to view them as all operative, including the closed shop provisions, at least until an appropriate tribunal should rule otherwise. And the conduct of the hiring in this case shows that the contract was in fact so interpreted. Since a person is deemed to intend the foreseeable consequences of his conduct (*Radio Officers' Union* v. *National Labor Relations*

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tractual criteria, i.e., competency as evidenced by journeymen status, and seniority based upon length of employment as a journeyman with the hiring employer and as a journeyman elsewhere in the industry." Thus, Foreman Every testified that, as between a union and a non-union shaper, both of whom were equally competent, he would hire the union man first, and that a regular situation holder would lose his priority if he lost his membership in good standing in the Union (R. 672; 413–414, 417–418). Similarly, when non-union employee Randall, a 10-year veteran at the News, protested to Superintendent Rottenberg about the hiring of a large number of outside card men who had shaped-up on the eve of a holiday to get the double pay, Rottenberg replied, not that they were more competent, but merely that union men had to go to work ahead of non-union men (R. 667; 93). Finally, the fact that it was union membership rather than competency which governed priority and seniority is shown by the circumstance that, when, in the spring of 1956, the Union decided that it needed more journeymen and gave competency tests to a group of non-union extras, these men were not placed on the priority list as soon as they had passed the tests but only after they had been admitted to union membership, had deposited their membership cards with the chapel chairman, and had been certified by him (R. 672; pp. 10–11, *supra*).

Board, 347 U.S. 17, 45), the legal effect of the General Laws clause is thus the same as though the ITU and the publishers had specifically set out closed shop provisions in the contract.

D. THE CONTENTIONS WHICH HAVE BEEN ADVANCED TO THE CONTRARY DO NOT IMPAIR THE BOARD'S CONCLUSIONS WITH RESPECT TO THE GENERAL LAWS CLAUSE

1. In accepting its earlier holdings in *Red Star Express Lines* v. *National Labor Relations Board*, 196 F. 2d 78, and related cases, which it distinguishes (R. 825), the court below agreed that, had the contract here specifically recited the provisions of the General Laws requiring ITU membership as a condition of employment and then added a clause such as "provided not in conflict with law," the Board could properly have found that the contract contained illegal union-security provisions. The court, however, treats the situation here as different because, since the contract does not set out the illegal union-security provisions but merely refers to the General Laws (which do) and purports to include them only to the extent they are not "in conflict with law," there has been no physical incorporation of illegal provisions in the contract. As the First Circuit properly concluded in the *Haverhill* case, 278 F. 2d 6, No. 340, this Term, there is no merit to this distinction.

Even if it be assumed that, as a matter of private contract law, the technique used here would be sufficient to exclude from the contract the illegal provisions, that does not end the matter. As the court below itself recognized in *Red Star*, 196 F. 2d at 81, "the question is not only whether under principles of contract

law the addendum would contractually negative the illegal union security clauses, but whether it would have the effect of preventing the coercion that would otherwise follow." In other words, the question is whether the employees involved would tend to view the contract here any differently from that in *Red Star,* and, if not, it is unlawful here no less than there.

From the standpoint of the employees, no meaningful distinction can be made between setting out questionable union-security provisions in the contract and then purporting to suspend them if they are "illegal" (the situation in *Red Star*), and incorporating by reference only the "legal" provisions of union rules which include questionable union-security provisions (the situation here). In both cases, the burden is shifted to the employee to forecast whether the union-security provisions are legal or illegal, and thus effective under the contract. Indeed, the clause here puts an even greater burden on the employee than does the one in *Red Star*; there, at least, his attention is directed to the union-security provision, while here, with no particular provision of the General Laws being earmarked for scrutiny, he must first guess what portions of the voluminous Laws would conceivably present a legal issue." It is the Board's judgment, and human

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[27] The fact that the question of what Laws may be legally applied was not subject to a fixed answer at the time the contract became effective is emphasized for the employee by Section 38 of the contract, which, in relevant part, provides (R. 537–538):

> * * * It is understood and agreed * * * that if any provision modified from any preceding contract or excluded from this contract solely because of the restrictions of

experience supports it, that employees in an industrial plant cannot be expected to play the role of a lawyer or judge, but would instead tend to comply with a doubtful provision and leave the determination of its ultimate validity to an appropriate tribunal. Hence, whether confronted with the clause here, or the one in *Red Star,* the response of the employees is likely to be the same. As the First Circuit summed up in *Haverhill,* 278 F. 2d at 13, n. 14: "We perceive no reason why the coercive effect of the illegal clauses would be lessened if, as in this case, they are incorporated by reference into the contract, rather than written into the contract itself."

2. Nor is the foregoing analysis unrealistic, as the Union contends (memorandum in response to petition for certiorari, pp. 4–5). The Union asserts that the employees are not apt to be coerced by the contract because, on reading it, they will see that it is valid on its face and that the General Laws are added only to the extent that they are not in conflict with the contract and applicable law; to assume that they would then turn to the General Laws and conclude that their closed shop provisions are nevertheless in the contract attributes to the employees "a rare ob-

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law, no longer is held to be inoperative, either by legislative enactment or by decision of the court of highest recourse, then such provision automatically shall become a part of this contract, to the extent permitted, and be in force and effect as though it had been originally made a part hereof.

* * * Should * * * any provision of this agreement, at any time during its life, be in conflict with Federal or State Law or regulation then such provision shall continue in effect only to the extent permitted. * * *

tuseness or cynical skepticism." This argument puts the cart before the horse. Given the previously described background of the ITU's efforts to maintain closed shop conditions through, *inter alia,* making the General Laws a part of every contract, the employee would tend to regard all of the provisions of the laws, including the closed shop requirements, as operative unless clearly advised otherwise; a look at the contract does not furnish such enlightenment, for it incorporates the General Laws subject to exceptions which are not specific (see R. 554).[28]

3. On no firmer footing is the Union's contention that the technique of incorporating the General Laws to the extent they are not in conflict with law cannot be regarded as unlawful since there are legitimate reasons for the use of that procedure, rather than specifying which of the Laws are incorporated. Thus, ITU President Randolph testified that the ITU represents employees in some plants where the closed shop would be legal, and the complexities of industry were such that it was difficult to spell out under what

[28] Nor is it likely that, because Section 20-b of the contract (R. 533) defines "journeymen" without regard to union membership considerations, the employees would tend to regard the General Laws definition of the term (see Article V, Section 11, R. 555) as "in conflict with the contract" and thus excluded. With the background described pp. 23–30, *supra*, it is more likely that the employees would regard the requirement of union membership set forth in the General Laws as *supplementing*, rather than in conflict with the contract, at least absent a specific provision in the contract, as there was in *Honolulu Star-Bulletin* v. *National Labor Relations Board*, 274 F. 2d 567, 569 (C.A.D.C.), that the term journeymen "shall in no way be understood to apply exclusively to members of the International Typographical Union."

circumstances the various provisions of the General Laws would or would not be legal (R. 244, 249, 251). Granted that this is so, it still does not privilege the use of an incorporation technique which, as we have shown, tends to infringe the Section 7 rights of employees in those plants where closed shop conditions would be illegal. Moreover, as Judge Aldrich pointed out in *Alpert* v. *International Typographical Union*, 161 F. Supp. 427, 431 (D. Mass.), an earlier stage of the *Haverhill* case, involved in No. 340: "* * * [I]f union lawyers cannot separate the wheat from the tares, how can Gazette, Gazette's employees, and prospective employees? A collective bargaining agreement should be understandable in the marketplace, not in Utopia. Its specific provisions must be compatible with the Taft-Hartley Act on their face, and not as the result of some subsequent elimination or construction."

4. The vagueness of the Laws clause cannot be justified by relying on the fact that the Board order here requires the employer and the Union to post a notice stating they will not encourage union membership by discriminating "in regard to hire, tenure or terms and conditions of employment, except to the extent permitted by Section 8(a)(3) of the Act" (R. 721, 724). See *Honolulu Star-Bulletin* v. *National Labor Relations Board*, 274 F. 2d 567, 570 (C.A. D.C.). Since Section 8(a)(3) contains but one exemption, which is specifically set out—*i.e.*, a union-security agreement which meets the requirements enumerated—the employee can, by looking at the statute, readily ascertain what is meant by "except to the

extent permitted by Section 8(a)(3)." A reading of the General Laws, on the other hand, would afford no similar means of separating the licit from the illicit. Moreover, the notices to be posted here give further specificity to the "except clause" by requiring that they be accompanied by instructions to the employees that they are not bound to follow the specific provisions of the General Laws which call for closed shop or union preferential hiring (R. 721, 725).

5. Finally, the Board's holding in this case does not constitute an unwarranted intrusion on the freedom of the parties to a collective bargaining contract to draft their own contract terms. Here, as in *Felter* v. *Southern Pacific Ry. Co.*, 359 U.S. 326, where this Court held that the parties could not by contract require that an employee revoke his checkoff authorization only by means of the form furnished by the union, "[l]atitude is allowed in the terms of such arrangements, but not past the point such terms impinge upon the freedom expressly reserved to the individual employee" (p. 333). The Act permits the employer and the union to couch their union-security provisions in any form they desire, so long as the foreseeable effect of the language chosen is not to lead the employees to believe that they have to join the union in order to secure and retain employment. However, where, as here, the language has that effect, it becomes violative of the Act.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed and the case remanded (see n. 1, p. 4, *supra*).

Respectfully submitted.

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NO. 339

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

NEWS SYNDICATE COMPANY, INC. and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEWS SYNDICATE COMPANY, INC.

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NO. 339

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

NEWS SYNDICATE COMPANY, INC. and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEWS SYNDICATE COMPANY, INC.

The Questions Presented

The Court of Appeals for the Second Circuit has refused enforcement of the Board's order in this case on the grounds described in the Board's petition for certiorari and its statement of the "Questions Presented" (Br., p. 4).

In seeking an affirmance on the ground that the court below correctly decided the principal (and subsidiary) questions stated by the Board, as to whether the collective bargaining agreement established a discriminatory hiring system and unlawfully encouraged Union membership, this respondent will argue that (a) the Board's finding of fact

were properly reversed by the court below, and (b) the following question, presented to, but not reached by, the Court of Appeals, is to be considered here[1]:

> May the Board order an employer to reimburse its employees for dues and initiation fees paid to a union during the existence of an illegal hiring scheme tending to encourage union membership, in the absence of any evidence that (a) the employer actively coerced the employees into union membership or (b) derived direct benefit from the illegal hiring practices to such an extent that coercion may be presumed?[2]

In this brief will be found (a) a statement of the facts relevant to all questions presented to the Court, and (b) a law argument on the additional question being presented by this respondent.[3] The law argument on the question raised by the Board will be made by New York Mailers' Union No. 6 ("the Union"), the other respondent in this case, and by International Typographical Union (ITU), petitioner in No. 340, this Term, which will argue against the

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[1]See *Langnes* v. *Green*, 282 U. S. 531, 538 (1931); *United States* v. *Carignan*, 342 U. S. 36, 38 (1951).

[2]A subsidiary question presented here is whether the Board properly ordered the dues reimbursement remedy on its own motion, without prior notice to the News that it would be sought and absent any application for such remedy by the Board's General Counsel, and without affording the News the opportunity to prove the absence of coercion.

[3]In view of the presentation being made to the Court in opposition to the Board's powers to apply the dues reimbursement remedy in *Carpenters' Local 60*, No. 68, this Term, the law argument on this question will be primarily that of an employer, and mere duplication of the general argument of the petitioner and *amicus* in No. 68 will be avoided.

Board's contention of *per se* illegality of the collective bargaining agreement.[4]

The Issues Presented: The Employer's Viewpoint

Burton Randall was a "moonlighter", in the current neologism, who augmented his regular livelihood by working weekends as a nonunion extra at respondent's newspaper in New York City. When other nonunion "extras" who worked more regularly than he were accepted into Union membership and were scheduled to be hired before him (although he still continued to work his regular weekend schedule), Randall filed a charge with the Board. By the time the Board reached a final determination, the case meanwhile having become another battleground between the Board and the ITU, both respondents were ordered to reimburse all Mail Room employees of the News for initiation fees and dues. The potential liability of this respondent under the Board's order now exceeds $350,000, and is growing at the rate of close to $7,000 as each month passes.

Aside from the staggering amount involved,[5] there are other disturbing implications in the Board's order in this case. Chief among these is the Board's refusal to recognize a double standard of liability between unions and employers

[4]In leaving this portion of the argument to the respondent Union, respondent News does not wish to be understood as thereby endorsing or accepting the Union's position in its entirety. Primarily the Union is arguing against those provisions of the Board's order initially recommended by the trial examiner, to which respondent News filed no exceptions. While the order found that the News had engaged in unfair labor practices, which the News by no means concedes to be correct, it was not then and is not now wholly opposed to every provision of the Board's order.

[5]The Court will observe that in No. 68, where the Board is putting up its main defense of the dues reimbursement order, the amount of dues in issue is $525 (Bd.'s br., p. 37).

in dues reimbursement orders. Whatever the liability of the latter may be, the employer, at least in this case, is being directed, allegedly on principles of unjust enrichment, to pay out amounts it is not holding and that have not even passed through its hands as checked-off dues. The Union and the News have been treated as *in pari delicto*, the News because it "participated" in maintaining a contract that the Board says was illegal and at least two Courts of Appeals[6] say was not.

Concededly the principles of *Virginia Electric* (*infra*, p. 22) have continuing vitality, and the News is not arguing that in no case may an employer—or for that matter a union—be compelled to reimburse employees for dues that they have been actually coerced into paying. But in this case those principles have been distorted beyond recognition.

Notwithstanding efforts of the employer and the Union to accommodate hiring procedures to Taft-Hartley requirements, efforts which the Board's General Counsel conceded were made in good faith (R. 129), the Board took the case of a single individual who it found had lost only one night's employment and some overtime because of those practices. (R. 682, 710) and inflicted punitive damages upon both employer and Union in an astronomical amount. An apparent purpose of the order is to compel employers, under the lash of the Brown-Olds remedy, to exert maximum economic force against a union seeking to retain hiring preference for its members. The ironic result is that the News, which is assumed under the Board's reasoning processes to have actively encouraged union membership on the part of its employees, is suffering a much heavier penalty than if

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[6] In *Honolulu Star-Bulletin* v. *N. L. R. B.*, 274 F. 2d 567 (D. C. Cir. 1959), followed by the Court of Appeals in this case, the Court unqualifiedly rejected the Board's argument of *per se* illegality of the contract.

it had followed the contrary course of discouraging such membership.[7]

Nor is the News arguing that it should have been exonerated here because it honestly feared a costly strike if it did not accept ITU demands that its General Laws be incorporated and that the foreman be a member of the Union. Obviously such a defense will not avail an employer against direct and wilful participation in an unfair labor practice. *N. L. R. B.* v. *Newspaper and Mail Deliverers' Union*, 192 F. 2d 654, 656 (2d Cir. 1951). Deliberate evasion of the law on the part of these respondents is not an issue in this case in view of General Counsel's concession of their good faith (R. 129), and especially where the contract they signed has been found by at least two Courts of Appeals[8] to be free of the legal taint that the Board insists the parties should have foreseen.

The function of Brown-Olds orders, as proclaimed by Board representatives (*infra*, p. 24) is to serve as a "big stick", a "spur" to the abandonment of discriminatory

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[7]The usual remedy for discouraging union membership is at worst reinstatement with back pay for discharged employees, if any, and a cease and desist order. See *N. L. R. B.* v. *Mackay Radio & T. Co.*, 304 U. S. 333 (1938); *N. L. R. B.* v. *Ford Radio & M. Corp.*, 258 F. 2d 457, 460 (2d Cir. 1958). So far as we are aware the Board has never in that class of cases sought enforcement of any order directing the employer to pay to the union the dues that would have been paid by his employees if he had not discouraged them from union membership, although such an order would have more logical and legal basis as a "remedy" than the one entered here.

[8]Both the Second Circuit in this case and the Court of Appeals for the District of Columbia in *Honolulu Star-Bulletin* v. *N. L. R. B.*, 274 F. 2d 567, have so held; *cf.* the First Circuit's decision in No. 340, this Term, holding that ITU locals had refused to bargain in violation of § 8(b)(3) and had attempted to cause employers to encourage union membership in violation of § 8(b)(2) by insisting on the incorporation of unspecified ITU General Laws, the legality of which was "not free from doubt" and of "honestly disputable validity" 278 F. 2d at 14.

hiring practices. The use of that stick on this respondent, under the circumstances of this record, is intolerable. Perhaps the Board's apocalyptic vision is correct, and we shall some day have a Peaceable Kingdom of labor relations where the wolf of trade unionism will dwell quietly with the nonunion lamb. But it is up to the Board, with the aid of court-enforced orders, to bring that about; employers should not be compelled under pain of this "remedy" to bring this about.

The Collective Bargaining Agreement

Justification of the provisions of the collective bargaining agreement attacked by the Board in this and related cases will be left primarily to the respondent Union, which (with its parent ITU) is the author of the challenged clauses.

However, as the Board has undertaken to impose joint liability, without distinguishing between the Union and the employers (or even between the ITU and the local Mailers' Union), some comments by the employers may be in order.

The charge made against the employers is that they joined forces with the ITU to enforce a closed shop in defiance of the Act. As they must have been aware of "the history of the ITU's efforts to maintain closed shop conditions and the role played by the General Laws in this effort" (Bd.'s br., p. 38), they should have foreseen that the consequences of this clause in the contract would be "the same as though the ITU and the publishers had specifically set out closed shop conditions in the contract" (*id.*, p. 39).

It is perfectly true that the ITU has tried to sail as close to the wind as possible in complying with the Taft-Hartley ban on the closed shop. It is also true that the newspaper

employers are aware of this, for indeed they have been often squeezed as a result. But there is no basis, either in this record or outside it, for the Board's conclusion that the contract between an ITU local and the New York City publishers provided for a closed shop. As the Court of Appeals found (R. 834), there was no preference given to Union members except as an extension of the fact that all competent and regularly available employees happened to be members of the Union.

Even if it is conceded that the Board correctly found the existence of *de facto* closed shop conditions, surely the mass dues reimbursement order is not an appropriate remedy against the employer that will effectuate the policies of the Act. Such an order allows of no middle ground to be steered by the employer between a ruinous strike on one hand and a heavy fine by the Board on the other. For many years ITU contracts had included a clause incorporating its General Laws; with the advent of Taft-Hartley, the only modification acceptable to the ITU was the provision which excluded those laws in conflict with federal law (R. 733-35). An employer who demurred at this was met with the assertion that the clause was legal, an opinion backed up by the expertise of ITU counsel gained in their struggles with the Board's General Counsel, in which they had by no means had the worst of it. Yet the rule now being advocated by the Board would seem to require the employer to decide at his peril what the Board would eventually determine to be the correct answer to this perplexing legal problem. The unfairness of such a rule is underscored where as here the employer's acceptance of the union argument is later vindicated by decisions of the Courts of Appeals.

That this was not a period of ready acquiescence by employers in ITU contract proposals is shown in the testi-

mony of Woodruff Randolph, ITU president. He conceded that as late as 1957, well after this case had been filed, the ITU membership was being told of the continuing "struggle with employers to maintain our General Laws as a basis of union shop operations" (R. 270). Such adamancy was not to be softened by arguments of employers, whose motives were in any case suspect because the Union knew that the employers were seeking any pretext to rid themselves of such contract provisions. Nor would it yield to the predictions by employer's attorneys of possible legal traps which ITU lawyers could show were as yet undefined by any court.

Perhaps the stigma of being adjudged guilty of an unfair labor practice must be accepted by a party to an agreement of that kind if it is later declared illegal. But it is entirely unwarranted to carry the remedial concept a long step further and to assess heavy financial liability against an employer who had no way of knowing if indeed it was illegal or if the Union was right in insisting that it was not.

The Board's Expertise

There may be a good deal of expertise and "enlightenment gained from experience"[9] underlying the Board's attack on the ITU's laws and its insistence that it by this time knows very well that the ITU wants to insure hiring preference for its members without resort to the union shop clause allowed by § 8(a)(3). But when it comes to shaping a remedy the Board's supposed expertness is submerged by its zeal to punish the supposed wrongdoers.

The punitive aspects of the Brown-Olds orders are so apparent on their face that the Board can no longer be allowed to mask the deficiencies in its deductive reasoning processes behind the claim of special competence to deal

[9] *N. L. R. B.* v. *Seven-Up Bottling Co.*, 344 U. S. 344, 346 (1953).

with the problem. The wholesale use of the dues reimbursement remedy has led even a Board member to protest.[10] The Brown-Olds label is plastered across virtually every Board decision involving illegal hiring practices. Recognizing that that coercion of employees must be established in each case the Board routinely and mechanically decides that coercive methods may be conclusively presumed from illegal result. Decisions and orders are constructed not from the record in a particular case, but with catch phrases assembled by scissors and pastepot from other Board decisions[11].

This technique is illustrated in the Board's determination here that both the News and the Union merely by executing the contract, unlawfully encouraged employees to join the Union in order to obtain work at the News "thereby inevitably coercing those employees to pay initiation fees and dues" (R. 711). (The idea of coercion is derived from the original Brown-Olds case where employees were compelled by the employer to get union approval before starting to work.) The Board's syllogism appears to go as follows:

> By entering into the contract with the illegal General Laws provision the News encouraged its employees to become or remain members of the Union.
>
> This "inevitably" coerced them, i.e., the verbs "encourage" and "coerce" are interchangeable.

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[10]Board member Jenkins, dissenting in *Shear's Pharmacy, Inc.*, 128 NLRB No. 124 (1960), questioned "the desirability of applying this form of remedy on a mechanical basis without the use of a factual frame of reference as a predicate for its imposition." See also: *Southeastern Plate Glass Co.*, 129 NLRB No. 50 (1960).

[11]The Second Circuit, in *Building Material Teamsters, Local 282, etc. v. N. L. R. B.*, 275 F. 2d 909, 912 remarked on the Board's practice of imposing Brown-Olds orders "more or less routinely and with regular incantation of the same words here recited".

> Therefore, the mere execution of the contract was enough to satisfy the Brown-Olds requirement of coercion.

There are flaws in both premises, but the most obvious one is that no encouragement was given by the employer, either by its enforced acceptance of the clauses demanded by the Union or by the functioning of the hiring procedures. Surely the Board must know from the other ITU cases that the problem is not to compel employers to stop forcing their employees into joining ITU locals, but to compel the latter to open membership lists and to permit the publishers to hire new employees of their own selection.[12]

Another lapse in the Board's expertise is its failure to distinguish between the parent ITU and the local Mailers' Union. Doubtless this is not a mere oversight, for it enables the Board to expound the novel doctrine of *respondeat inferior*, and to charge the local with the ITU's defiance of the Taft-Hartley Act.

No other case involving the ITU shows anything like the conscientious efforts made here by the Mailers' Union to bring traditional hiring methods into line with changing legal requirements. As far back as 1951 the Union, which had taken in 100 new members earlier that year, proposed to the publishers a plan for adding a like number of pro-

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[12]As the Board's brief observes (p. 29), in 1947 Randolph announced that the ITU would not allow the Taft-Hartley Act to be used by employers to "shoe-horn" non-union men into a union composing room, and called for his members to strike before letting that happen. Ten years later he was still telling his members of the "struggle with employers to maintain our general laws as a basis of union shop operations" (R. 270). His views had not softened when he testified here that to allow the employer to determine "who members of the union were to be * * * is entirely repugnant to the history [and] tradition of the International Typographical Union". Yet one of those employers is now charged by the Board with "coercing" long standing ITU members into paying their dues.

bationary members (R. 564).[13] In 1954 a new procedure for hiring was jointly adopted by the publishers and the Union; it contained this significant provision (R. 561):

> "However, as among non-Union employees in the bargaining unit and as between such men and Union members therein, the Foreman is privileged to exercise any fair judgment of selection on the Publishers' behalf, provided only that the men of his choice be competent and that he not discriminate against or in favor of any men for their membership or non-membership in the Union."

This program continued in later years.[14]

Thus the Mailers' Union, although not desiring to sacrifice its ties to the ITU or to run counter to official ITU policy, took substantial and meaningful steps to avoid the charge that it sought unlawful preference for its members.

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[13]The memorandum of the Publishers' Association of New York City, describing this plan to its members, is significant for two reasons: (1) it shows an attitude on the part of Mailers' Union officials that is in marked contrast to the official ITU position on the Taft-Hartley Act, and (2) it reveals that the problem of hiring practices was one with which the publishers were constantly struggling. Incidentally, it also shows (R. 565) a proposal by the Union that if a man did not wish to join the Union on a probationary basis, he was still to be preferred in hiring over junior men who had become probationary Union members.

[14]After the 1956 actions which at the News alone resulted in the acceptance of 31 extras into Union membership (*infra*, p. 15), and following the intermediate report in this case in 1959, the Union and the employers had further discussions on the problem and finally submitted to an arbitrator the question of establishing objective standards which would further eliminate any possible charge of discrimination in the hiring of extras. These standards, known as the Baar-award, were accepted by the Board as non-discriminatory in a case involving The New York Times (Case No. 2-CA-6432); in another case (No. 2-CB-2504), still pending before the Board, a trial examiner recommended dismissal of the complaint against the Mailers' Union, finding that the present hiring practices were not unlawful.

These facts were well known to the Board's General Counsel, whose representative made this concession at the hearings in this case (R. 129):

> "Mr. Examiner, may I state for the record that we don't question the good faith of the parties in trying to deal with this problem.
>
> "What we do allege here is that the conclusions they reached, or the practice that resulted and the contract that resulted, unfortunately, ran afoul of the provisions of the Taft-Hartley Act."

To concede that the Mailers' Union, like the News, acted in good faith, and then later to impute to the Union all of the base motives that the Board claims to have discovered on the part of the parent Union, is neither consistent nor equitable.

Statement of Facts

This case arises from the fact that in the publication of a large metropolitan newspaper like respondent's New York Daily News, manpower requirements in production departments vary widely from day to day. To satisfy these requirements, the employer must have available not only a regular work force, but others who can be called upon as needed.

In the Mail Room, part of the Delivery Department, 50 men may be enough to handle a "light" weekday paper, while perhaps 200 men will be needed when the Sunday paper is being produced on Friday and Saturday nights (R. 476). The nucleus of the work force is the ***regular situation holders,*** the journeymen employees who work five nights a week and who do not have to "shape" (apply for work before being hired) each night. Next come the ***regular substitutes,*** who fill in for absent regulars and are

the first ones called upon to augment the work force as needed. Finally, there are the *extras,* largely nonunion, who work the "heavy" nights after shaping and being hired by the foreman (R. 831).

Unlike regular substitutes, who must be available for work *throughout the week* and normally work a full five shifts, extras are nothing but casual employees, who are free to show up for work or not as they see fit. The extra is an "employee" only when he is hired, and then only for that particular night; he has no vested right to the job, and no official priority (seniority) under the collective bargaining agreement.

In the case of extras, the practice at the News was to employ a system of industry-wide seniority, and to give preference in hiring to men who were regularly employed in the industry as regular situation holders at the News or regular substitutes at other newspapers (all of whom happen to be Union members) as against nonunion men who merely "shaped" at the News but had no regular status in the industry (R. 121-22, 126). The Board continues to press its argument that this is proof of unlawful discrimination (Br., pp. 9, 37),[15] but the Court of Appeals rejected this contention, noting that the preferred men were those who had demonstrated competency and availability for steady work, as against casuals, or even regular extras, who could not be counted on to appear for work, except when it suited their own convenience (R. 831-34).

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[15]The concept of industry-wide seniority, implicitly rejected by the Board's present claim that Randall was discriminated against when substitutes regularly working at other newspapers were hired before him, has elsewhere in this record been approved by the Board. In 1953 a Board staff attorney advised that, in negotiations involving extra men in the pressroom, the Board recognized and accepted the principle of industry-wide seniority (R. 577-79).

The Case of Randall

Burton Randall, by vocation an importer of shellfish and by avocation a part-time mailer at the News, started to work at the News in 1946 (R. 26). From 1951 on, Randall, although not a member of respondent Union, was regularly hired, like other nonunion extras, when he shaped at the News for a Friday and Saturday night job. Randall's regular job started at 5:00 A. M. Monday to Friday (R. 25), and he conceded that he could not handle two full-time jobs (R. 36). Hence he confined his work at the News to those nights when he did not have to work at his main job early the next morning. He was under no obligation to appear at the News and if he decided not to work on any weekend, the only consequence was that he lost a night's pay.

The policy of the Mailers' Union was to accept into membership only those who had demonstrated their competency at the trade and had achieved regular situation holder or regular substitute status. Extras were not eligible for membership, because they were not earning their livelihood at the trade (R. 181, 187-88, 193). As Smollon, the Union president, put it (R. 181):

> "We make the condition of holding employment and holding a job the qualifications for getting a card in our union. We don't make qualifications in our union the reason for holding a job."

In 1956, with the ready assent of the News, the Union developed a program for increasing the number of regular substitutes by working out with the News a plan for increasing the number of regular substitutes, moving up "extras" and accepting those who wished to join as members of the Union. The consent of the News was not given until full details of the Union's plan were presented, and

the whole arrangement represented arm's-length bargaining between the parties (R. 124-25).

Of the nonunion extras at the News, numbering about 60, 31 met the requirement of working regularly at the trade three shifts or more per week and were made regular substitutes after they had passed an examination to demonstrate their competency as journeymen. On June 10, 1956, 30 of these men, although junior in length of service to Randall, were upgraded to regular substitute status which gave them hiring priority over Randall (R. 833). Even before any of these men were hired ahead of him, Randall went to the Board to file a charge against the News and the Union. Actually, Randall continued to be hired every time he "shaped" on his regular nights (R. 43, 67, 674) except once on a "light" Sunday night when other nonunion extras were hired ahead of him (R. 22, 46).

The trial examiner found that Randall suffered no other reduction in earnings as a result of this change (R. 682), but the Board reversed, finding that he had lost possible overtime which he said had averaged 15-30 minutes a shift (R. 23) and was receiving less favorable work assignments (R. 710).

The record is clear that, had Randall decided to earn his livelihood from the newspaper business, rather than as a fish importer, he could have become a regular substitute and a Union member in 1956 or earlier. Or if the ITU had relented in its opposition to the Taft-Hartley Act, and complied with its filing requirements so that the Union could validly enter into a 30-day union shop agreement under § 8(a)(3), all full-time Mail Room employees at the News could have been compelled to become Union members within thirty days after employment, and if Randall had not become a member of the Mailers' Union, he at least would have been disqualified from complaining that the News was unlawfully "encouraging" him into such member-

ship. Unfortunately for the News, neither of these events occurred, and it remains confronted with the Board's dues reimbursement order.

Proceedings Before the Board

Randall complained to the Board's Regional Office that he was being discriminated against by the Union and the News because the newly promoted regular substitutes would be hired ahead of him. At about the same time a similar charge was lodged with the Board by an employee of The Wall Street Journal.[16]

After a prolonged hearing, in which Randall's charge soon disappeared from view as General Counsel launched an attack on the ITU's General Laws, the trial examiner issued an intermediate report in which it was recommended that both Union and employer be compelled to desist from further discriminatory hiring practices (R. 684-85, 687), and that certain allegedly illegal provisions of the collective bargaining agreement be neutralized (R. 686).

Both parties were directed to reimburse Randall for earnings lost when he was denied employment on a Sunday night after he had filed his charge with the Board.[17]

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[16] Arrigale, a mailer employed as an extra at The Wall Street Journal, filed a charge similar to Randall's, and the cases were heard together by the trial examiner. Unlike Randall, Arrigale filed the charge only against the Union, and not the employer. The trial examiner's recommended order applied to both publishers (as well as, in certain other respects, all other New York City newspaper publishers, even though they were not parties to the proceeding). As The Wall Street Journal was not a party to the proceeding it was not subjected to the Board's Brown-Olds remedy, and is not directly a party to this appeal.

[17] After filing his charge at the Board's Regional Office Randall "shaped" at the News on a Sunday night. (The suspicion is that he did so at the instigation of a Board agent, and to entrap the parties, as he had to be at his regular job at 5:00 A. M. Monday and ordinarily did not seek Sunday night work at the News.) This was, incidentally, the one point on which the Board was successful in the Court of Appeals, which remanded the case to the Board to enter an order for that night's pay (R. 836).

The ensuing developments are of interest as an illustration of the vagaries of practice before the Board. Respondent News filed no exceptions to the trial examiner's report, put in no brief either for or against the report, and did not appear at or participate in the oral argument before the Board. Nowhere in the record up to this point had there been the slightest intimation that the dues reimbursement remedy was one which might appropriately be employed here. Indeed, at that time (October 1958) "Brown-Olds" was a name virtually unknown outside the construction industry where it was primarily employed by the Board as a weapon against the hiring hall. So far as the News was aware, if the trial examiner's recommendations were adopted by the Board and even if the General Counsel's exceptions were accepted by the Board, the News was required only to reimburse Randall for one night's pay, and possibly for some lost overtime, which seemed a small enough price to pay for the clarification of perplexing legal problems occasioned by incorporation of unspecified "legal" ITU General Laws and the contract requirement that the foreman who does the hiring be a member of the Union.

The News failed, however, to anticipate the zealousness of Member Fanning, the newest member of the Board, who at the close of oral argument asked General Counsel's representative[18] if he recommended the imposition of the Brown-Olds remedy. The equivocal reply was that General Counsel recommended Brown-Olds "wherever proper" (R. 525). The Board's decision treated this as a "request" by General Counsel for imposition of the Brown-Olds remedy (R. 710), although it is clear from the record that the dues

[18]The attorney from the General Counsel's staff who had actually prepared and tried the case was unable to argue the case before the Board, and the staff attorney who served as his substitute and who was prodded into this "recommendation" at the oral argument was without direct prior experience in this case.

reimbursement feature was incorporated by the Board *sua sponte,* and in defiance of the provision in § 10(c) of the Act that the trial's examiner's recommended order, if no exceptions are filed, "shall become the order of the Board".

As soon as the Board's decision was announced, the News filed a lengthy petition for rehearing (R. 729-49), but this was summarily denied (R. 752).

The Decision of the Court of Appeals

A unanimous Court of Appeals found that there was no warrant for the conclusion "that the hiring system in general, or the competency system in particular, by its discrimination against nonunion applicants, encouraged union membership" (R. 835). In a well-reasoned decision that showed the care with which the court had studied the record, it denied the correctness of the Board's finding that the foreman's hiring authority vested the Union with exclusive control over "hiring" at the News (R. 829), and affirmatively found that there was no reasonable ground for an employee to assume that his employment opportunities depended on membership in the Union (R. 830).

In addition to determining that execution of the collective bargaining agreement was not *per se* a violation of the Act (R. 830), the court held that in practice the hiring system at the News was valid and non-discriminatory either as to Randall in particular or mail room employees in general. While the Board now argues (Br., p. 8) that the Court's view of the facts "appears to be" dependent upon the erroneous premise that the contract did not incorporate the closed shop provisions of the ITU General Laws, in fact the Court found, wholly independent of the contract provisions, that in actual practice the employment procedures at the News were not violative of the Act. And it made this determination on the basis of

facts that stand largely uncontradicted in the record, without finding it necessary to reverse the Board on the weight of evidence or to accept testimony rejected by the Board. The Court noted that (R. 821) "in view of our conclusions on other dispositive issues, we need not discuss" the "numerous remedies" ordered by the Board.

It may be observed that the Board, in its argument to this Court, largely ignores the findings of the Court of Appeals, and repeatedly cites the trial examiner's report and the Board's decision as if they had been confirmed by the decision of the court below.

SUMMARY OF ARGUMENT

A. As the Board's power under the Act is to remedy, and not to punish, it may not properly require an employer to reimburse employees for dues or fees paid by them to a union during the existence of an illegal hiring system until it determines, on the basis of substantial evidence, that coercion was exerted by the employer against the employees. Coercion may be established either by (a) direct proof that the employer forced the employees into the union, or (b) by proof that the employer's participation in the hiring methods was of such measurable and significant benefit to the employer as to warrant the inference that coercion was used as a means of insuring continuance of the system.

Under the teachings of *Virginia Electric & Power Co. v. N. L. R. B.*, 319 U. S. 533 (1943), the Board exceeds its powers when, in the absence of proof of employer coercion, it uses the dues reimbursement order as a "deterrent", designed to punish past and present violators of the Act's prohibition against discriminatory hiring practices. In any case, the Board's remedial order must be "reasonably re-

lated" to the right which the Board is charged under the Act with protecting. The Brown-Olds order becomes a singularly inappropriate form of relief where the proof shows that the employees, without any encouragement from their employer, were either long standing union members or actively seeking union membership.

B. In this and many other cases involving employers, the Board has perverted the holding of *Virginia Electric* and has indiscriminately applied the dues reimbursement order as a penal system designed to compel employers to exert maximum economic pressure against a union which tries to win hiring preference for its members. Moreover, the Board has failed to recognize that circumstances such as are presented in this record may justify preference to union members, not because they belong to the union but because by reason of competency, availability and regularity of work they are entitled to be hired over nonunion men working as extras and looking elsewhere for their primary livelihood.

The Brown-Olds cases in the Courts of Appeals justify the conclusion that mere knowledge of the existence and operation of an illegal hiring scheme provides insufficient basis for the imposition of a dues reimbursement order against the employer. In every case where the court has denied enforcement against the employer, the facts show that the employer not only knew of the system, but more actively participated in its establishment and functioning than the News is shown to have done in this case.

The standards of liability advocated by this respondent in this case have found general acceptance in the Courts of Appeals which have considered orders that are designed to make an employer "disgorge" dues paid by their employees.

C. Moreover, the manner in which the dues reimbursement order was imposed upon the News cannot be condoned

as a matter of administrative procedure. At the very least it should have received advance notice that this liability might be inflicted, and afforded an opportunity to bring in affirmative evidence of its abstention from any form of coercion against its employees.

ARGUMENT

The law argument that follows, it will be recalled, does not deal with the question raised by the Board as to the interpretation of the collective bargaining agreement, and does not give a full exposition of the legal objections to the Brown-Olds doctrine. The Union's brief will argue the former, while the Brown-Olds argument here will be focused upon its effect upon employers, leaving it to the briefs of petitioner and the *amicus* in No. 68, *Carpenters' Local 60*, to present the union position.

A. ABSENT PROOF OF ACTUAL COERCION OR EVIDENCE JUSTIFYING AN INFERENCE OF COERCION, A DUES REIMBURSEMENT ORDER AGAINST AN EMPLOYER IS *ULTRA VIRES* THE BOARD BECAUSE PUNITIVE AND NOT REMEDIAL.

This Court's pronouncement in 1938 that the Board's "power to command affirmative action is remedial, not punitive", *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 236, is still the law.[19] As Chief Justice Hughes then stated (pp. 235-36), the Board's authority does not extend to "a punitive jurisdiction enabling the Board to inflict upon

[19] In *N. L. R. B.* v. *District 50, United Mine Workers*, 355 U. S. 453, 458 (1958) this Court again cautioned that the Board's power is not "limitless", but is contained by the statutory requirement that the remedy be "appropriate" and adapted to the situation calling for redress.

the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order". And of special pertinence here is the Court's later warning that the Act "does not prescribe a system of penalties or fines in vindication of public rights". *Republic Steel Corp.* v. *N. L. R. B.*, 311 U. S. 7, 10 (1940).[20] Again, in language that recalls the statements of the Board's General Counsel that he would use Brown-Olds as a "big stick" (*infra*, p. 24), the Court warned that a Board order could not be justified because it would act as a deterrent, for then the Board "would be free to set up any system of penalties which it would deem adequate to that end".[21]

It is not necessary to plunge into "the bog of logomachy"[22] by formulating precise tests which will, like a kind of litmus paper, determine whether a particular order is punitive or remedial. The conclusion that the Board has transcended its powers in this case can be reached upon an examination of the claimed source of those powers, this Court's decision in *Virginia Electric & Power Co.* v. *N. L. R. B.*, 319 U. S. 533 (1943).

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[20]See also *N. L. R. B.* v. *Express Pub. Co.*, 312 U. S. 426, 435 (1941), where the Court said that "we can hardly suppose that Congress intended that the Board should make or the court should enforce orders which could not appropriately be made in judicial proceedings."

[21]*Republic Steel* at p. 12. In that case the Court refused enforcement to a Board order which would have required employers to reimburse local governments for work relief payments made to employees on an unfair labor practice strike. The Court remarked that such an order would be an "exaction" which would not make the employees whole or assure their right to bargain collectively.

[22]Mr. Justice Frankfurter in *N. L. R. B.* v. *Seven-Up Bottling Co.*, 344 U. S. 344, 348 (1953). *Cf.* the definition in *Re Merchants' Stock and Grain Co.*, 223 U. S. 639, 641 (1912) where the Court said an order would be "deemed punitive when its purpose is to vindicate the authority of the court by punishing the act of disobedience as a public wrong".

In that case the Court held that where an employer interfered with the rights of its employees to self-organization and collected union dues from them which it turned over to a company-dominated union for its support, the Board had the right to direct the employer to reimburse its employees for the payments illegally exacted. The Court's invocation of the principle of restitution as a remedy for the unlawful coercion is unmistakably clear in this language from the majority opinion (p. 544):

> "The purpose of the order is not to penalize the Company by requiring repayment of sums it did not retain in its treasury. Those sums did go into the treasury of the Company's creature to accomplish purposes the Company evidently believed to be to its advantage, and the order of reimbursement is intended to remove the effects of this unfair labor practice by restoring to the employees what would not have been taken from them if the Company had not contravened the Act".

Today the Board dismisses the company union aspect of *Virginia Electric* as merely incidental, and argues that "domination of the union was simply the unfair labor practice which brought the Board's remedial powers into play" (Br. in No. 68, p. 32). However the question may arise, the *sine qua non* of the case is coercion, which is equated with fraud: a person who has conferred a benefit upon another in a void or voidable transaction because of duress or undue influence is entitled to restitution as if he had been defrauded.[23]

In the *Brown-Olds* case, 115 NLRB 594 (1956), the Board carefully and correctly stated the rule of *Virginia Electric* that restitution is a remedy for coercion. Empha-

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[23] RESTATEMENT OF RESTITUTION § 70. Incidentally, the Board cited this work to the Court of Appeals, apparently for the proposition that the News might have a right of contribution from the Union, if it has to make reimbursement as directed by the Board (Br. p. 35).

sizing that the dues and assessments there collected by the union "constituted the price these employees paid in order to retain their jobs" the Board held that "reimbursement" was "necessary to expunge the illegal effects of the unfair labor practices", because "otherwise the very fruits of the unfair labor practice itself will remain in the hands" of the union.

In the first case in which reimbursement of dues by an employer found to have "encouraged" union membership was ordered, *N. L. R. B.* v. *Broderick Wood Products Co.*, 261 F. 2d 548 (10th Cir. 1958), the Board succeeded in winning enforcement of its order on proof that the employer had discharged or suspended 60 employees to coerce them into submitting to an unlawful security clause and becoming members of a union to which they did not wish to belong. On a record amply justifying the finding of coercion, the court agreed that the principles of *Virginia Electric* were sufficiently broad to authorize this remedial action by the Board.

Within the Board's own confines, the Brown-Olds doctrine underwent searching "re-examination".[24] When it re-emerged, deterrence became the watchword.[25] The Board's General Counsel was frank to announce these purposes: Brown-Olds would be used as a "sword", a "stick", a "spur" to compliance with the Act.[26] As it was obviously difficult for the Board to rationalize, on principles of resti-

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[24]In *Galveston Maritime Association*, 122 NLRB 692, fn. 18 (1958), the Board explained that Brown-Olds had been withheld in an earlier case because the Board "was still in the process of re-examining the *Brown-Olds* principle".

[25]"The reimbursement remedy more properly effectuates the purpose of the Act because it provides not only a deterrent to future violations but an incentive to future compliance." *Local 425, Plumbers and Pipe Fitters Union*, 125 NLRB No. 107 (1959).

[26]The documentation of these statements appears in the *amicus* brief in No. 68, pp. 23-25.

tution, an order directing the reimbursement by an employer of amounts that he had never received, the Board began to adopt the principle of treating the employer as *in pari delicto* with the union. This technique is illustrated in the present case where, after declaring that the Act would be frustrated if the union were permitted "to retain" the unlawfully exacted dues, the Board in the next sentence directs *both* the Union and the employer to refund the dues to the employees "jointly and severally" (R. 711). The missing link in the Board's reasoning was explained to the Court of Appeals (Bd's br., p. 34) on the ground that the News had "participated equally in the coercion which encouraged union membership". Mere "participation", however, in the absence of any proof of benefit received or to be expected, is not a proper canon of liability under the statute being administered by the Board, however suitable it might be in a criminal case.

Nor is the Board's plea that coercion may be difficult of proof a justification of what the Board has been doing in these cases. Perhaps it would be unfair, as the Board argues (Br. in No. 68, p. 27), to demand that the Board parade the employees across the witness stand to testify that they had been coerced. But it is considerably less "fair" (*id.*, p. 28) to conclude the opposite, that coercion must have existed because the employer took no effective steps to discourage the employees' desire to join the union. Even the Board's power to synthesize sweeping conclusions from sketchy facts cannot save this type of reasoning.

The Board concedes that, for a remedy to lie within its authority, it must be "reasonably related" to the right which it purports to vindicate (*id.*, p. 22). In the context of this case, the right which the Board is protecting is the right of the employee to be free from coercion into union membership. There is no relation, reasonable or otherwise,

between that right and the reimbursement remedy against a non-coercive employer. And the Board's remedial powers are far transgressed when, without a shred of proof that the employer either coerced its employees or derived some benefit which might justify the inference of coercion, the Board commands the reimbursement by the employer of dues to employees who, as this record indicates, are fighting for the chance to become Union members.[27]

B. THE "CONFLICT" IN THE COURTS OF APPEALS AS TO THE APPROPRIATENESS OF THE REIMBURSEMENT REMEDY IS MORE APPARENT THAN REAL. FOR THE MOST PART, THE REMEDY HAS BEEN ENFORCED WHERE IT COULD BE JUSTIFIED AS REMEDIAL AND HAS BEEN REJECTED WHERE ITS APPLICATION WAS PENAL AND OPPRESSIVE.

With each new decision by a Court of Appeals dealing with the mass reimbursement of dues remedy, it becomes more apparent that the conflict betwen circuits over the appropriateness of this remedy can be resolved by a reaffirmation of the principles of *Virginia Electric*, and would never

[27] While the Court of Appeals found only that "for aught that appears in the record" Randall and the extras who did not meet the established standard were anxious to join the Union (R. 835) and that the Union membership of most employees antedated passage of the Taft-Hartley Act (R. 831), it could fairly be concluded that the nonunion employees actively sought union membership (R. 101, 104, 199). Thus, when in 1956 the Union won the assent of the News to its plan of promoting extras to regular substitute status and accepting them as union members, every one of the 31 employees selected for advancement applied to and was accepted by the Union. Indeed, Burton Randall testified that he too wanted to join the Union (R. 43, 78), but he was not acceptable because he was working less than the number of weekly shifts which the respondents considered (R. 124-26, 189-90) (and the Court of Appeals agreed, R. 833-34) was minimum evidence of availability for work throughout the week and desire to work at the trade as a primary means of livelihood.

have arisen if the Board had not departed from those principles. For the most part, the remedy has been sustained where it was evident from the circumstances of the case that the employees were actually coerced into paying the dues; it has been refused enforcement where the Board announced its doctrine of "inevitable coercion" but where coercion was not established by or fairly inferable from the evidence.

This is best illustrated by a comparison of cases decided in seven circuits that now have ruled both ways on the question.[28] The most recent instance is a decision by the Seventh Circuit, which had earlier enforced the remedy in *Local 60, Carpenters*, No. 68 this Term, but which refused enforcement of a Brown-Olds order in *Perry Coal Co.* v. *N. L. R. B.*, F. 2d , 47 LRRM 2208.

The Board's order there directed an employer and a union, jointly and severally, to reimburse dues paid by the employees to the union. After correcting the impression of

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[28] First Circuit: *N. L. R. B.* v. *Local 111, United Bro. of Carpenters*, 278 F. 2d 823 (enforced); and *N. L. R. B.* v. *Local 176, United Bro. of Carpenters*, 276 F. 2d 583 (not enforced).

Second Circuit: *N. L. R. B.* v. *Revere Metal Art Co.*, 280 F. 2d 96 (enforced); and *Morrison-Knudsen Company* v. *N. L. R. B.*, 275 F. 2d 914 (not enforced).

Third Circuit: *O'Neill Int. Detective Agency* v. *N. L. R. B.*, 280 F. 2d 936, (enforced); and *N. L. R. B.* v. *American Dredging Company*, 276 F. 2d 286 (not enforced).

Fifth Circuit: *Dixie Bedding Manufacturing Co.* v. *N. L. R. B.*, 268 F. 2d 901 (enforced); and *N. L. R. B.* v. *Local Union, No. 85, Sheet Metal Wkrs. Int. Ass'n*, 274 F. 2d 344 (not enforced).

Sixth Circuit: *N. L. R. B.* v. *Wells*, 283 F. 2d 689 (enforced); and *N. L. R. B.* v. *Saltsman*, F. 2d , 47 LRRM 2002 (not enforced).

Seventh Circuit: *N. L. R. B.* v. *Local 60, United Bro. of Carpenters*, 273 F. 2d 699, No. 68 this Term, (enforced); and *Perry Coal Co.* v. *N. L. R. B.*, F. 2d , 47 LRRM 2208 (not enforced).

D. C. Circuit: *Local Lodge No. 1424, Machinists* v. *N. L. R. B.*, 264 F. 2d 575 (enforced), rev'd on other grounds, 362 U. S. 411; and *Local 357 Teamsters* v. *N. L. R. B.*, 275 F. 2d 646, No. 85 this Term (not enforced).

the Third Circuit that the decision in No. 68 had accepted the Board's argument that the "presumption of coercion is conclusive once the unfair labor practice is shown", the court said:

> "Inasmuch as there are no findings of actual coercion in the instant case nor any evidence which would have supported such findings, we hold that part of the order requiring reimbursement of dues paid, should not be enforced."

Those cases in which Courts of Appeals have sustained the remedy in part, but have rejected it as applied to all employees, also demonstrate that proof of coercion is an essential element to the appropriateness of this remedy. For example, in *Morrison-Knudsen Company* v. *N. L. R. B.*,[29] the Ninth Circuit enforced a reimbursement of dues order against an employer and the union as to five college students who were coerced into joining the union to get summer jobs, but it rejected the Board's broad order requiring reimbursement to all employees, remarking that (p. 76) "reimbursing a lot of old-time union men could not be 'anything but a windfall to the employees and an unjust penalty to the employer' ". And in *N. L. R. B.* v. *Saltsman*,[30] the Sixth Circuit restored the order recommended by the Trial Examiner limiting the reimbursement to those employees who joined the union during the course of the project when the unlawful assistance to the union occurred, rejecting the Board's contention that union men who were members of the union before going to the project were "inevitably coerced" to "remain members" by the unlawful assistance.

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[29] 276 F. 2d 63 (9th Cir. 1960).

[30] F. 2d , 47 LRRM 2002 (6th Cir. 1960), enforcing in part 123 NLRB 1176 (1959).

The necessity of proving actual or presumptive coercion is also illustrated by those cases in which an employer[31] has been subjected to the remedy. In several of the cases where enforcement of the remedy against an employer was refused, it appeared that a majority union was involved and that the union had secured unlawful preference in hiring for its members or had caused the employer to discriminate against a non-member or member not in good standing. In such cases, the courts concluded that reimbursement of dues would be a windfall to the union members, who had profited by the unlawful practice, and was an unjust penalty to the employer.[32]

The substantial distinction between the position of an employer that did not collect the dues and the union which

[31] For purposes of the statistical comparison which follows, all cases in which mass reimbursement of dues was ordered generally by the Board in favor of all employees in the bargaining unit will be treated as Brown-Olds cases. It should be understood, however, that the Board's incidence of success in cases where the union represented only a minority of the employees, or was company-assisted, has been much higher than in the cases involving a union clearly representing a majority of the employees, of which the instant case is an illustration. Without attempting to divide the cases into majority and minority union groups, the overall statistics are as follows:

An employer has been involved in 17 of the 27 Brown-Olds cases decided by the Courts of Appeals since November, 1958. A count shows that, after a slow start, "enforcement denied" has now gone definitely ahead of "enforcement granted" by a score of 17 to 10 over all; "enforcement denied against employers" leads "enforcement granted against employers" by a score of 11 to 6, while "enforcement denied against unions" leads "enforcement granted against unions" by 11 to 7 in the 18 cases in which unions are involved. A short summary of each of these 27 cases appears in Appendix to this brief.

[32] See, e.g., *N. L. R. B.* v. *American Dredging Company*, 276 F. 2d 286 (3rd Cir., 1960); *N. L. R. B.* v. *United States Steel Corp.*, 278 F. 2d 896 (3d Cir. 1960); *Lakeland Bus Lines, Inc.* v. *N. L. R. B.*, 278 F. 2d 888 (3d Cir. 1960); *N. L. R. B.* v. *Halben Chemical Co.*, 279 F. 2d 189 (2d Cir. 1960); *Morrison-Knudsen Company* v. *N. L. R. B.*, 275 F. 2d 914 (2d Cir. 1960).

did retain them has been noted by the Second Circuit.[33] In denying enforcement against both the union and the employer, the court observed that "requiring reimbursement by the union is less oppressive than demanding it of the employer, since the union at least received the dues". In another case,[34] where only the employer was charged, the same court remarked that it was unfair to require the employer to pay back all of the dues collected by the union, which although "the primary beneficiary of the unlawful conduct and undeniably the most culpable" was permitted to retain the funds unlawfully exacted by it.

In five of the six cases where the mass reimbursement remedy was enforced against an employer, the employer either had actively participated in the unlawful coercion or had a purpose to be served by the unlawful conduct. Thus, in *Broderick Wood*,[35] the employer actually suspended and threatened its employees with discharge if they failed to put themselves in good standing with the union. In four other cases,[36] the employees were compelled to pay dues to a minority or company-assisted union by virtue of an unlawful union shop clause agreed to and enforced by their employers, in some instances to avoid dealing with some other union and in other instances because the employer did not bother to check the union's claim that it represented a majority. In the sixth case, the circumstances warranting imposition of the remedy did not appear.[37]

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[33] *Building Material Teamsters, Local 282, Etc.* v. *N. L. R. B.*, 275 F. 2d 909, 912 (2d Cir. 1960).

[34] *Morrison-Knudsen Company* v. *N. L. R. B.*, 275 F. 2d 914, 918 (2d Cir. 1960).

[35] *N. L. R. B.* v. *Broderick Wood Products*, 261 F. 2d 548 (10th Cir. 1958).

[36] *Local Lodge No. 1424, Machinists* v. *N. L. R. B.*, 264 F. 2d 575 (D. C. Cir. 1959); *Dixie Bedding Manufacturing Co.* v. *N. L. R. B.*, 268 F. 2d 901 (5th Cir. 1959); *N. L. R. B.* v. *Revere Metal Art Co.*, 280 F. 2d 96 (2d Cir. 1960); and *O'Neill Int. Detective Agency* v. *N. L. R. B.*, 280 F. 2d 936 (3d Cir. 1960).

[37] *N. L. R. B.* v. *Wells*, 283 F. 2d 689 (6th Cir. 1960).

Another significant, perhaps not controlling, factor in the employer cases is that in each instance it appears[38] that dues were checked off by the employer and paid over to the union. There was no checkoff here; employees paid their union dues directly to the Union (R. 506). While the presence or absence of a checkoff should not be the point on which the employer's liabilty turns, its presence is significant because it tends to show that the union needed employer assistance to maintain its position. In the case of a long-standing union like the Mailers, it is perfectly obvious that no employer help was asked or required for it to maintain its majority position in the newspaper shops.

Thus, the standards of liability that may be shaped for application to coercive unions will not suffice for employers who have not received the dues being reimbursed. The mechanical application of joint and several liability to both if the Board believes that the fault of either is shown, and without any effort to divide responsibility between them, is inherently wrong, for as the Second Circuit observed in *Revere Metal Art Co.*, 280 F. 2d 96, 101:

> "In an appropriate case we might think a different view ought to be taken with respect to an employer who has been forced into an unfair labor practice by economic pressure from a labor organization."

C. THE METHODS BY WHICH THE ORDER WAS IMPOSED ON THE NEWS IN THIS CASE ARE REPUGNANT TO PROPER ADMINISTRATIVE PROCEDURES

We have already observed that the News, in the mistaken belief that its maximum back pay liability was a few

[38] It is not always clear from the report whether a checkoff actually existed, but in cases such as *Revere Metal Art Co.*, where the Board's order directed reimbursement of dues "paid or checked off" we have assumed that the contract provided for a checkoff.

hundred dollars because that was all General Counsel sought, found itself with potential liability of more than a quarter of a million dollars after the Board acted on the exceptions to the intermediate report (*supra*, p. 17). The News had been given no chance to introduce evidence as to whether its employees were coerced into joining the Union or remaining members of the Union. Certainly the requirements of a fair hearing include the right to know the claims of the opposing party and to meet them. See *Morgan* v. *U. S.*, 304 U. S. 1, 18 (1938); *cf.* Administrative Procedure Act, § 5(a), 5 U. S. C. § 1004. Moreover, the Board ignored its own Rules and Regulations which provided (§ 102.46(b)) that "no matter not included in a statement of exceptions may thereafter be urged before the Board". General Counsel had not excepted to the examiner's failure to recommend dues reimbursement. The Board explained to the Court of Appeals (Br., p. 32) that this section was "designed to place a limitation upon what the parties may litigate before the Board, not upon the Board's remedial powers".

Finally, the Board ignored the provision found in the last sentence of § 10(c) of the Act, which makes the trial examiner's recommended order the order of the Board if no exceptions are filed. As General Counsel had never sought the imposition of the Brown-Olds remedy, and of course had filed no exceptions to the omission of such a remedy from the recommended order, the Board was powerless to add the reimbursement direction on its own motion. See *Building Material Teamsters, Local 282, etc.* v. *N. L. R. B.*, 275 F. 2d 909, 913 (2d Cir. 1960).

CONCLUSION

The whole thrust of the Board's argument in this case is that the News ought to have foreseen that its contract with the Union would some day be held illegal, and should have let the Union strike before it agreed to sign the contract. If the News is culpable in this respect, the Board's remedial authority is confined to an order defining the area of illegality and prohibiting its maintenance in the future. The absence of proof of actual or constructive coercion by the News of its employees, or of wilful evasion of the Act by the terms of the contract under attack by the Board, are sufficient to exonerate the News from liability to reimburse dues to its Mail Room employees.

If this case should be remanded to the Court of Appeals on the principal issue raised by the Board (Bd.'s br., p. 4), respondent News naturally hopes that the Court's decision in this or No. 68 will so define the scope of the Board's powers to order dues reimbursement as to relieve the News from that feature of the order in this case.

It is submitted, however, that the Court of Appeals correctly denied enforcement of the Board's order, and its judgment should be affirmed.

Respectfully submitted,

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February 8, 1961

APPENDIX

BROWN-OLDS CASES IN THE COURTS OF APPEAL

I

Cases Where Reimbursement of Dues Was Refused

N. L. R. B. v. *Local Union No. 85, Sheet Metal Wkrs.' Int. Ass'n*, 274 F. 2d 344 (5th Cir. 1960).

The employer was not charged, but the union was found to have conducted an unlawful hiring hall arrangement under which union members were preferred in hiring. The court refused to enforce an order requiring reimbursement of dues to all present and former employees, because it could not be said that there was evidence (p. 346) "to show that any of the members of the Union would have declined to pay dues and surrendered their Union membership if Union membership had not been necessary in the procuring of employment". In effect, the court distinguished between mere "encouragement" and "coercion" and held that without evidence of coercion, reimbursement of dues becomes "punitive rather than compensatory".

Honolulu Star Bulletin, Ltd. v. *N. L. R. B.*, 274 F. 2d 567 (D. C. Cir. 1959).

The court refused to enforce a Board order which provided in part that the newspaper publisher[39] must reimburse

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[39]The ITU local was not a party to the proceedings because the charging parties filed only against the employer. Thus, the grave financial consequences of the Brown-Olds remedy may depend entirely upon the whimsical choice of the charging party as to the party against whom the charge will be filed.

all employees in its composing room who had paid dues and assessments to the ITU local. Said the court (p. 571):

> "Since we find that the contract was not illegal and was not a closed-shop agreement, the premise for the Board's ruling falls. The Board's finding that the payment of dues and assessments to the Union was made a condition of employment is without the slightest semblance of support in the record. This provision of the order, therefore, will not be enforced."

Local 357, Internat'l Bro. of Teamsters, etc. v. *N. L. R. B.*, 275 F. 2d 646 (D. C. Cir. 1960), No. 85 this Term.

The court refused to enforce, as against the employer and the union, the Board's reimbursement of dues order relating to "all casual employees", although it affirmed the Board's finding that the exclusive hiring arrangement was discriminatory and encouraged union membership in violation of the Act.

Building Material Teamsters, Local 282, etc. v. *N. L. R. B.*, 275 F. 2d 909 (2d Cir. 1960).

The court refused to enforce a reimbursement order against the union as well as the employer. The violation involved a clause in the contract requiring union membership without the 30-day waiting period specified in § 8(a)(3). The court remarked (p. 912): "We recognize also that requiring reimbursement by the union is less oppressive than demanding it of the employer, since the union has at least received the dues—although it has also rendered the services for which the dues were paid. However, there is not a syllable of evidence that in this case the omission of the 30-day clause in fact had any coercive effect". It is apparent that the union had represented a majority of the employees for many years.

Morrison-Knudsen Company v. *N. L. R. B.*, 275 F. 2d 914 (2d Cir. 1960).

This case was decided the same day as *Building Material Teamsters, supra.* Only employers were involved here. The court affirmed the Board's holding that the employers violated §§ 8(a)(3) and (1) of the Act by maintaining an exclusive hiring hall arrangement with a union under which non-members of the local were discriminated against by giving preference to members. The reimbursement of dues remedy was denied enforcement because it was "unduly harsh and penal in nature". The court also observed that it was unfair to require the employer, who had at most received only indirect benefit from the practice, to pay back all of the dues, etc., collected by the union local (dues were not checked off but were collected by the job steward), while at the same time the union, which was "the primary beneficiary of the unlawful conduct and undeniably the most culpable" was permitted to retain the funds unlawfully exacted by it.

N. L. R. B. v. *American Dredging Company*, 276 F. 2d 286 (3d Cir. 1960).

Only the employer was subject to the remedy. There was no question about the employer's violation of §§ 8(a)(1), (2) and (3) of the Act, in that it gave illegal financial assistance to the union and maintained illegal closed shop hiring practices. The court held, however, that reimbursement of dues to union members would in no way effectuate the policies of the Act. No employee was shown to have joined the union to get his job; to the contrary, all jobs went to union members. Reimbursement of dues to the union members, who profited by the unlawful preference, was called a "windfall" to them and an "unjust penalty" to the employer.

Morrison-Knudsen Company v. *N. L. R. B.*, 276 F. 2d 63 (9th Cir. 1960).

The court enforced reimbursement of dues against an employer and the union as to five college students who were coerced into joining the union to get summer jobs, but it rejected the Board's broad reimbursement order as to all employees, saying (p. 76) that "reimbursing a lot of old-time union men could not be 'anything but a windfall to the employees and an unjust penalty to the employer' ". It held that the Board's broad order "is punitive, penal, non-remedial and an unauthorized requirement of payment to third persons not shown to have been in any manner damaged by the asserted unfair labor practice".

N. L. R. B. v. *Local 176, United Brother. of Carpenters, etc.*, 276 F. 2d 583 (1st Cir. 1960).

The court refused enforcement of the Board's "Brown-Olds" remedy against the union. The violation there was the "tacit" agreement that all employees would have to obtain job clearance from the union and the failure to meet *Mountain Pacific* standards. The court refused to enforce the order requiring "disgorgement" of dues on the basis that the violation of the Act was not a conscious one by the respondent because the conduct was recognized as unlawful only after it had occurred and the Board had adopted its *Mountain Pacific* doctrine. In those circumstances, the court said (p. 586) that "a disgorgement order would seem to us to be an *ex post facto* penalty".

N. L. R. B. v. *Millwrights' Local 2232, District Council, etc.*, 277 F. 2d 217 (5th Cir. 1960).

The reimbursement order was directed only against unions. It appeared that the employer had unlawfully dele-

gated control over hiring to the union and that two men were refused employment because they did not have union clearance. Enforcement of the remedy was refused on the ground that there was nothing to indicate that any member paid dues to the union because it was necessary to obtain or retain employment or that union members would not remain members if the hiring hall was not used. The court said (p. 222):

> "In the absence of some proof that the dues and assessments would not have been paid except as a requirement for obtaining employment, we think the order of restoration intended as a compensatory remedy results instead in a windfall to the employees and an unjust penalty to the Union."

Lakeland Bus Lines, Inc. v. *N. L. R. B.*, 278 F. 2d 888 (3d Cir. 1960).

Both the union and the employer were subject to the reimbursement remedy. The charging party, who had been a union member, was suspended by the union because he took a grievance directly to management. Upon suspension from the union, the employer discharged him because he was not in good standing with the union. As a result of the case, the Board discovered that the union shop clause in the contract failed to include the required 30-day waiting period. Although the court sustained the findings of discrimination and illegality of the contract, it denied enforcement of the Brown-Olds remedy, saying (p. 892): "There is no showing in this case that any employees were coerced into joining or remaining in the union. There is no proof that the union was company-sponsored or dominated."

N. L. R. B. v. *United States Steel Corp.*, 278 F. 2d 896 (3d Cir. 1960).

Both the employer and the union were charged. The court found there was enough support for the finding of violation of §§ 8(a) (1) and (3) and 8(b) (1) (A) and (2) of the Act in that union men who did the hiring preferred union men and discriminated against a man because he was not in the good graces of the union. The court rejected the Board's "inevitable coercion" doctrine and found that there was no evidence that any employee was coerced into joining the union. The court reserved the question as to whether the remedy could ever be enforced against an employer. As to the union, it said that (p. 900) "to order a union to reimburse dues which it would have collected even if it had not committed an unfair labor practice appears to be nothing more than a fine" and held that the Board did not have the power to impose penalties to deter violations of the Act. The court also criticized the broadness of the Board's order, calling it a "shotgun blast, and not related to any aspect of this case".

N. L. R. B. v. *Halben Chemical Co.*, 279 F. 2d 189 (2d Cir. 1960).

Only the employer was involved here. The employer, during a strike, recognized a union that apparently represented a majority of its employees, but at a time when decertification of another union was still pending. The court refused to enforce an order requiring reimbursement of dues not checked off but paid voluntarily and directly by the employees to the union, saying (p. 192):

> "Here, as in Morrison-Knudsen, *supra*, where we excised a reimbursement order in a discrimination case, the remedy is imposed solely against the employer, although the funds are, or at least were, in

the hands of the union. On the other hand, as in N. L. R. B. v. Revere Art Metal Co., supra, where we upheld the reimbursement remedy, this case deals with a union claimed to have been unlawfully assisted by the employer. However, in Revere the employer did not contest the order and our opinion recognized that cases might arise where imposition of the remedy would be arbitrary even when the unfair labor practice was allegedly unlawful assistance to a union or an unlawful union security agreement. This is such a case.

. . "There is no evidence of coercion of respondent's employees. * * * We consider that, on such a record, to require this employer to reimburse all its employees for sums paid directly by them to the union is 'oppressive and therefore not calculated to effectuate a policy of the Act'."

N. L. R. B. v. *Local Union No. 450; etc.*, 281 F. 2d 313 (5th Cir. 1960).

Only the union was involved. The court refused enforcement of the reimbursement of dues portion of the Board's order, commenting (p. 317):

"Undiscouraged by previous decisions of this Court and other Courts of Appeals, the Board again seeks enforcement of the Brown-Olds order imposing reimbursement of union dues more as a penalty than as a remedy for the union's unfair labor practices."

The evidence showed an exclusive union hiring hall arrangement whereby the master mechanic who did the hiring had to be a union man of three years' standing. There was also evidence of discrimination in that the union prevented the promotion of a qualified engineer to master mechanic because his three years' experience was not all as a union member.

N. L. R. B. v. *Operating Engineers, Local 382,* F. 2d , 46 LRRM 2544 (8th Cir. 1960).

The employer was not a party. The Board applied the remedy against the union because it had caused the employer to discriminate against an employee by discharging him and was party to an unlawful hiring arrangement. While the court found ample evidence to support the finding of violation, it refused to enforce the reimbursement order because there was no basis for finding that the dues were coercively collected by the union and there was no direct relationship shown between the receipt of the funds and the unlawful practice.

N. L. R. B. v. *Saltsman,* F. 2d , 47 LRRM 2002 (6th Cir. 1960), enforcing in part 123 NLRB 1176 (1959).

Only the employer was involved. The employer had contracts with the union for ten years, but there was no union shop clause, although union dues were checked off if authorized by the employees. The evidence established that a job superintendent at a construction project delegated to the shop steward his duty to have new employees execute income tax withholding forms and told employees to "get signed up" with the job steward. The job steward, with the knowledge of the superintendent, had the employee sign union membership and check-off cards in addition to withholding forms. The trial examiner found that the employer had encouraged union membership and unlawfully assisted the union in violation of 8(a)(3) of the Act, and ordered reimbursement to all employees at the project, except those who were members before going to the project. The Board enlarged the order to include all employees at the project, regardless of when they joined, on the basis of its doctrine that all employees are "inevitably coerced * * * to become

or remain members", by such unlawful practice. The court refused enforcement of the refund order as to the employees who were members before going to the project.

N. L. R. B. v. *Local 1566, ILA*, . . F. 2d , 46 LRRM 2073 (3d Cir. 1960).

The court refused to enforce the *Brown-Olds* remedy sought to be applied against the union. The unlawful practice involved preference of union members at a "shape up" hiring and discrimination against two men because of non-membership in the union. Also involved was a union security clause held unlawful because the union had not complied with the filing requirements of the Act. The court said (46 LRRM at 2077):

> "* * * we have continued to insist that the reimbursement order must be limited to employees shown to have been coerced. And we emphasize that in such alleged instances it is necessary to produce evidence of coercion as to each individual concerning whom it is asserted."

Perry Coal Co. v. *N. L. R. B.*, F. 2d 47 LRRM 2208 (7th Cir. 1960).

This case is discussed *supra*, pp. 27-8.

II

Cases Where Reimbursement of Dues Was Ordered

N. L. R. B. v. *Broderick Wood Products*, 261 F. 2d 548 (10th Cir. 1958).

This is the first case following *Brown-Olds* in which an employer was required to reimburse dues jointly and severally with the union. The employer checked off initiation fees and dues for the union under an unlawful union security clause and actually suspended and threatened employees with discharge if they failed to put themselves in good standing with the union within twenty-four hours.

Local Lodge No. 1424, Machinists v. *N. L. R. B.*, 264 F. 2d 575 (D. C. Cir. 1959), rev'd on other grounds, 362 U. S. 411.

The employer and the union were required to reimburse dues to employees required to join the union and authorize check-off of dues by an invalid union security clause. The union did not represent a majority of the employees, but the employer agreed to the union shop clause and the check-off without first determining whether the union represented a majority of the employees. Thus, the action of the employer and the union did actually coerce the employees whose dues were ordered reimbursed.

N. L. R. B. v. *General Drivers, etc., Local 886*, 264 F. 2d 21 (10th Cir. 1959).

Reimbursement of dues was ordered against the union only. The employer was not a party to the proceedings. There the union refused to execute the contract so as to give effect to a wage increase until 80% of the employees joined the union and authorized the check-off of dues. If that evidence did not constitute proof of actual coercion, at least it is a reasonable inference that the employees did not all join voluntarily. The court enforced the Board's order because it could not say from the whole record that the remedy was "oppressive and therefore not calculated to effectuate a policy of the Act" (264 F. 2d at 23).

Dixie Bedding Manufacturing Co. v. *N. L. R. B.*, 268 F. 2d 901 (5th Cir. 1959).

Only the employer was involved. This was another case where the employer recognized a union that did not represent a majority of its employees. The employer entered into a five-year contract that provided for a small wage increase and contained union security and check-off provisions. The

court said (p. 907): "We agree that there must be some showing of coercion of the employees * * * ", but found that the unlawful union security clause "was in and of itself sufficient coercion to justify the issuance of the reimbursement order".

N. L. R. B. v. *Local 60, United Bro. of Carpenters, etc.*, 273 F. 2d 699 (7th Cir. 1960), No. 68 this Term.

The employer was not a party to the proceeding before the Board and was not subjected to the reimbursement order. There was proof that two qualified applicants for work, who were acceptable to the employer, could not get union clearance and did not get work. It also appeared that all who were hired had been referred by the union. The court found that such record supported the Board's finding that the dues and fees were coerced "in that there was present an implicit threat of loss of job if those fees were not paid" (p. 703). The court obviously considered that there was sufficient proof of actual coercion.

N. L. R. B. v. *Local 111, United Bro. of Carpenters*, 278 F. 2d 823 (1st Cir. 1960).

No employer was involved. An unusual aspect of the case was that the union appeared before the Board without counsel and filed no exceptions to the Trial Examiner's report. The court concluded that the Board's order was not entitled to "full scrutiny" because of the default, but should be enforced "if it is not unreasonable on its face, and has some semblance of support". The court noted that it had disapproved a "disgorgement order" in a prior case, but had not ruled "that the Board could never determine such relief to be proper". The violation of the Act was more than a failure to comply with the Board's *Mountain Pacific* standards, since there was evidence that the charging parties were

actually discriminated against and deprived of a job opportunity because they were not members of Local 111.

N. L. R. B. v. *Local 294, Internat'l Bro. of Teamsters, etc.*, 279 F. 2d 83 (2d Cir. 1960).

The court, upon rehearing, enforced the reimbursement of dues remedy against a minority union recognized by the employer, on the ground that a majority of the employees were coerced by the illegal agreement and that coercion was "traceable to the union". The employer was not a party to the proceedings.

N. L. R. B. v. *Revere Metal Art Co.*, 280 F. 2d 96 (2d Cir. 1960).

Both the union and the employer were required to reimburse dues to the employees, but the employer did not oppose enforcement of the order. This case also involved recognition of a union that did not represent a majority of the employees and the execution of an agreement providing for a union shop and the check off of dues. The employer was satisfied merely by a "shuffle" of union cards "flipped" in his presence by the union organizer. There was no question but that a majority of the employees were coerced into paying dues to the union. The court distinguished two prior cases where it had refused enforcement of a reimbursement of dues remedy on the ground that those cases involved §§ 8(a)(3) and 8(b)(2) and unquestioned majority unions, whereas the instant cases involved §§ 8(a)(1) and (2) and 8(b)(1)(A) of the Act and a minority union.

Paul M. O'Neill Inter. Detective Agency, Inc. v. *N. L. R. B.*, 280 F. 2d 936 (3d Cir. 1960).

Only the employer was a party to the proceeding. The court sustained reimbursement of dues as a remedy on the

ground that the employer required its employees, "as a condition of continued employment, to join a union the organization of which had been illegally assisted" by the employer. It also appeared that the employer had checked off the dues to the assisted union. The court distinguished the four other cases in which it had theretofore refused to enforce reimbursement orders on the ground that in none of those cases was the union company-assisted.

N. L. R. B. v. *Wells*, 283 F. 2d 689 (6th Cir. 1960).

The court enforced an order against an employer that was found to have encouraged membership in the union (not a party to the proceeding). The order included reimbursement of dues paid to the union during the course of a project. There was no discussion of the facts and circumstances that prompted the court to approve the remedy. Before the Board, 45 LRRM 1423, the employer had filed no exceptions to the trial examiner's report which found that he had required all employees to maintain union membership and to authorize the check off of dues as a condition of employment.

Petitions for certiorari are now pending in the following seven of the above cases:

N. L. R. B. v. *Local Union No. 85, Sheet Metal Wkrs'. Int. Assn.*, No. 89 (*supra*, p. 1a);

Morrison-Knudsen Company v. *N. L. R. B.*, No. 120 (*supra*, p. 3a);

N. L. R. B. v. *American Dredging Company*, No. 123 (*supra*, p. 3a);

N. L. R. B. v. *Millwrights' Local 2232, District Council, etc.*, No. 229 (*supra*, p. 4a);

N. L. R. B. v. *United States Steel Corp.*, No. 5, 228, 311 (*supra*, p. 6a);

N. L. R. B. v. *Local Union No. 450, etc.*, No. 467 (*supra*, p. 7a);

N. L. R. B. v. *Local 1566, ILA*, No. 285 (*supra*, p. 9a).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 339

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

NEWS SYNDICATE COMPANY, INC., and NEW YORK MAILERS' UNION NO. 6, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR NEW YORK MAILERS' UNION NO. 6

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On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR NEW YORK MAILERS' UNION NO. 6

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit (R. 821-836) is reported at 279 F. 2d 323. The findings of fact, conclusions of law and order of the Board (R. 635-695, 703-728, 751-760) are reported at 122 NLRB 818.

JURISDICTION

The opinion of the Court of Appeals was filed on May 20, 1960 (R. 821-836), and its decree was entered on June 8, 1960 (R. 836-837). The petition for a writ of certiorari was filed on August 18, 1960, and was granted on November 7, 1960. 364 U.S. 877 (R. 837).

STATUTES INVOLVED

The relevant statutory provisions are set forth in petitioner's brief at pages 2-3.

QUESTIONS PRESENTED

The questions presented are set forth at page 4 of petitioner's brief.

COUNTERSTATEMENT OF THE CASE

The Board concedes (Br., pp. 13-14) that its findings were reversed by the Court below. *Certiorari was not sought or granted on this issue.* Yet the Board still states the facts as found by it (Br., pp. 5-13), relies on findings (Br., pp. 18, 36-38) which the Court below set aside (R. 835), and, though the Court below found the practices under the agreement to be entirely lawful (*id.*), persists in claiming that they were unlawful (Br., p. 38). The Board's excuse for smuggling in its findings is that "the court's view of the facts appears to be dependent upon" its interpretation of the Laws clause (Br. p. 8, n. 5). This is untenable on its face, refuted by the opinion below, and utterly inconsistent with the Board's subsequent contention that its view of the Laws clause is supported by the rejected findings. (Bd. br. pp. 36-39). It therefore becomes necessary to summarize the holding of the Court below, to which the findings now relied on by the Board have no recognizable similarity.

The Court held (R. 822) "The contract contains nothing which on its face could be said to be violative of the Act. The General Counsel so conceded at the hearing and the Board does not contend otherwise." The agreement defined the requirements for employment as journeyman competence and experience, not Union membership or non-membership (R. 822, fn. 5). It was so applied. As the Court found (R. 832),

> ". . . the hiring procedures are based upon nondiscriminatory contractual criteria; i.e. competency as evidenced by journeyman status, and seniority based upon length of employment as a journeyman with the hiring employer and as a journeyman elsewhere in the industry."

The Court examined with care the practices under the agreement which it described (R. 831) as follows:

> "Full-time employees, known as 'regular situation holders,' form the bulk of the mail room labor force and they are not required to 'shape' for work, i.e., to be hired on a day-to-day basis. The record indicates, without apparent exception, that such employees are all both journeymen and union members . . . If, as is quite often the case, the size of the day's newspaper requires the employment of additional mailers, the foreman next hires from men who shape the shop 'regular situation holders' and 'regular substitutes' from other newspapers, in preference to 'other extras' . . . The record indicates that many of these 'other extras' . . . are men engaged in full-time occupations outside the newspaper industry who shape either irregularly or regularly, but at infrequent intervals throughout the week . . ."

As the Court below found (R. 834, fn. 24)

> "What is even more important, no 'nonunion extras' were journeymen, and all 'outside union men' were journeymen."

The Board's decision was based on a verbal trick. The critical finding of the Trial Examiner, adopted by the Board, was that (R. 672)

> ". . . the term 'journeymen' and 'competency' are indiscriminately thrown over all union members as a shield behind which the unlawful closed shop and preferential hiring practices may be maintained and enforced."

No evidence supports this finding, which was carefully examined and rejected (R. 830-835), and that reversal is not challenged here. Yet the Board continues to rely on this discredited theory (Br., pp. 8-11, 36-39). By coupling the undisputed fact that all journeymen and regular substitutes had exercised their lawful right to become Union members, with the equally undisputed fact that "other extras" were not eligible for Union membership, the Board attempted to create the illusion that preference was accorded because of Union membership rather than because of nondiscriminatory competence and experience considerations. The Court below was not misled, and these findings are not in issue here. It held (R. 834) that there was

> "... a dearth of evidence either that a Union journeyman has ever been hired in preference (let alone, an unlawful preference) to a nonunion journeyman, or that the qualifying standards for taking a competency examination are discriminatory. The record is barren of even the slightest hint that there has been discrimination in the conduct of the examinations."

It specifically found that all practices under the agreement had been lawful (R. 835).

Throughout its Brief, the Board's findings are repeated as if they had never been the subject of judicial review. (See particularly pp. 18, 36-38). This Court has expressed its reluctance to be a finder of facts *de novo,* even when that issue is properly before it, as it is not here. *NLRB* v. *Pittsburgh S. S. Co.,* 340 U.S. 498, 502-503; *NLRB* v. *American National Insurance Co.,* 343 U.S. 395, 409-410. We shall therefore not further pursue these hares. Lest there be any lingering doubts, however, we have lodged with the Clerk of this

Court copies of our briefs[1] before the Court below which fully demonstrate the lack of any evidence—much less substantial evidence—to support the Board's findings.

SUMMARY OF ARGUMENT

We respectfully refer the Court to the brief of petitioner in *ITU et al.* v. *NLRB*, No. 340, this Term (pp. 9-12) for a summary of our principal argument in this case.

In this Court, the Board advances a novel argument, based on no findings, and which was not presented to the Court below, *i.e.*, that the General Laws clause of the agreement is illegal because of certain litigation, involving the ITU, which dealt with events occurring in late 1947 and early 1948, immediately after passage of the Taft-Hartley Act. The fact that certain issues were decided adversely to the ITU's contentions at that time is used as the basis for an argument that the ITU has sought to maintain closed shop conditions since that time.

This argument ignores all the intervening events, which demonstrated that this clause has been and can be lawfully applied. It also ignores (1) the holding of the Court below that the particular agreement, including this clause, here under scrutiny, has been lawfully applied (a finding not challenged here) and (2) the fact that in the earlier litigation the General Laws clause was not attacked. In this Court the Board asserts for the first time that foremen and employees would consider all General Laws to be applicable until an appropriate tribunal should rule otherwise. No evidence supports this assertion, and it is contrary to

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[1] Filed on behalf of Respondent New York Mailers' Union #6 and the ITU as *Amicus Curiae*.

the explicit language of the clause itself and to experience under it. The Board maintains that employees would not read the agreement as "lawyers or judges" might. This is an implied admission that "lawyers or judges" would read it to be lawful.

The priority (seniority) provisions of the agreement are lawful. The Court below correctly held, in findings unchallenged here, that these did not delegate complete control over priority to the Union, within the Board's decision in *Matter of Pacific Intermountain Express Co.*, 107 NLRB 837, *enforced as modified*, 225 F. 2d 343 (CA8). The Board's decision in that case is in any event wrong. Unions have an entirely legitimate interest in seniority problems. The presumption that they may misuse such power, on which the Board's decision expressly rests, has no rational basis. Further, the Board has made the presumption irrebuttable, contrary to the requirements of due process.

The provisions of the agreement dealing with the duties and Union membership of foremen are lawful.

The Board has expressly represented to the Court of Appeals for the District of Columbia Circuit that the doctrine of *Matter of Mountain Pacific Chapter, etc.*, 119 NLRB 883, *enforcement denied*, 270 F. 2d 425 (CA9) now before this Court in *Local 357, etc.* v. *NLRB*, No. 64, is applicable solely to exclusively union-operated hiring-halls. In this case, as the Court below found, in findings not challenged here, there was no hiring hall, exclusive or non-exclusive. Yet, despite the representations made to the District of Columbia Circuit, the Board relies on that doctrine in this case. We say that this is an effort to mislead the Courts of Appeals. The *Mountain Pacific* doctrine is in any event wrong.

The Board's Order is invalid, in that it remits to the contracting parties the task of specifying which of the General Laws are lawful, and which unlawful, and authorizes and directs employers to make this determination for the union. Its attempted application of the *Brown-Olds* remedy to the facts of this case confers a windfall on the employees in question.

ARGUMENT

1. THE BOARD HAS NOT SHOWN THE GENERAL LAWS CLAUSE TO BE INVALID.

This subject has been fully covered in Petitioners' Brief in *ITU et al. v. NLRB*, No. 340, this Term, at pp. 12-29. We respectfully request that the argument there made stand as our principal argument in this case, and confine ourselves to answering certain contentions of the Board in its brief.

It is of some interest that the Board has once more come up with a new and different list of the General Laws deemed to be unlawful,[2] this time seven, a number not previously played. (See Appendix B, Brief, No. 340.) And, not for the first time,[3] the Board seeks to use its Brief before this Court to expound a *rationale* for its decision which the Board might have used had it thought of it, but which was not presented to the Court below.

The entering wedge for this new *rationale* is a group of cases involving the ITU concerning events in late 1947 and 1948, which are cited at p. 23, fn. 15, of the Board's brief. This litigation was not mentioned by

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[2] Brief, pp. 6-7, fn. 4; Art. V, Sec. 11, Art. VII, Secs. 1, 2, Art. VIII, Sec. 1, Art. IX, Secs. 2, 5, 6.

[3] For example, in *Local 60, etc. v. NLRB*, #68, this Term, the Board abandons, at least verbally, the "encouragement is inevitably coercion" argument, which was the basis of applying its *Brown-Olds* remedy here (R. 711).

the Board in its Decision (See R. pp. 703-726). The Intermediate Report in this case set forth a "brief resume" thereof (R. 639-640), but placed no further reliance thereon. Petitioner argues (Br. pp. 16, 23) that prior to 1947 the ITU "avowedly" operated on a closed-shop basis, as indeed it did, and lawfully so. It is asserted (Br. pp. 16, 24) that prior to 1947 the closed shop was "imposed mainly by the insertion of the ITU General Laws into collective bargaining contracts." Since this issue has not heretofore been litigated, it is not surprising that no evidence to support this assertion can be, or is, cited. The statement is inaccurate. Prior to 1947 the closed shop in the printing trades was imposed by contractual requirements, which had no reference to the General Laws, by which employers agreed to employ and retain only Union members as employees. Closed shop conditions would have obtained had there been no General Laws whatever.

These assertions provide a backdrop for the Board's contention that since passage of the Act, the ITU sought, "by numerous devices, to maintain closed shop conditions." (Br. p. 33). This is buttressed by a reference to "Conditions of Employment," which were used for a few weeks in 1947 and abandoned before there was any finding that they were unlawful, (see *Matter of ITU*, 86 NLRB 951, 981) and to an agreement tendered at that time, known as P-6A (Br., p. 30), used for a brief period in 1948. As to that agreement, a Trial Examiner, in findings not thereafter challenged, found (86 NLRB at page 1011) that

> "It is contended that certain specific clauses of P-6A, considered separately and in certain combinations, constitute that form a legally binding agreement to maintain a closed shop. I do not agree. It is clear from the record as a whole that P-6A was not designed as a legally enforceable

closed shop contract, was not represented as such, and was not so understood."

It is true that the Examiner found, and that the Board and the Court of Appeals for the Seventh Circuit sustained the finding, that a demand for a clause permitting cancellation of such an agreement on sixty days' notice violated the Act. Yet it will hardly be contended that reasonable lawyers might not have considered such a clause lawful. This is perhaps even truer of the holding, in *Evans* v. *ITU*, 81 F. Supp. 675 (N. D. Ind.) cited at page 31 of the Board's brief, that the *failure* to propose a neutral tie-breaker on a joint employer-union apprentice committee, violated the Act.

For immediate purposes, however, the most significant aspect of that litigation was that the *General Laws clause was not challenged*.[4] Despite the numerous attacks on the agreements then in question, the great bulk of which were rejected, it is apparent that this clause was considered so clearly legal that it was not made a target.

We earnestly submit that nothing could be more revealing of the barrenness of the Board's case than this raking about in the embers of dead litigation dealing with events of over thirteen years ago, following passage of a new, complex, and widely unsettling statute. Essentially Petitioner's position is that, because the Board and the Courts disagreed with certain legal arguments then advanced by the ITU, everything the ITU has done since must be unlawful. We agree that the statute has been so administered by the Board in this case, No. 340, and in the cases compiled in Appendix B of Pet. Br. No. 340. Implicit in Petitioner's

[4] See *Matter of ITU*, 86 NLRB 1014-1020; *Evans* v. *ITU*, 81 F. Supp. 675, 680, 683, 685-88.

argument, not relied on by the Board and not presented to the Court below, is the assumption that employees and foremen would seek the solace of a law library to read through these antique cases, and would be guided by what they there found, rather than by the terms of the agreement under which they are employed.

The Board repeatedly asserts that foremen and employees would consider all General Laws to be effective, "at least until an appropriate tribunal should rule otherwise" (Br., pp. 18, 19, 34, 38, 42). This, too, is novel. No evidence is or can be cited in support. If such had been the result the parties intended, they could have written the clause to provide that "All General Laws shall be effective until an appropriate tribunal shall rule otherwise." They did not do so. To the contrary, they said quite explicitly that no General Law is to apply if enforcement would result in a violation of Federal Law. The Board can cite no case in which a General Law was illegally applied; indeed, as the Court below found, under a substantially identical agreement (R. 834, n. 25),[5] there was no discrimination in hire and not even a complaint filed which would raise an issue warranting arbitration of any problem. These realities dispel the Board's fictional surmisings.

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[5] "The only offered evidence as to the fate which would await a nonunion man claiming competency who made application for employment as a journeyman, was Union testimony, here unchallenged, concerning past practices under a substantially identical contract between the Printers' Union, New York Typographical Union, No. 6, and the Publishers Association of New York City. Over fifty nonunion journeymen, claiming competency, were allegedly given the identical competency examination as that given apprentices, and while only twenty-six passed, none of those who failed complained of discrimination. Interestingly enough, all of the successful twenty-six applicants went to work prior to their admission into the Union, and while the Union application of one was rejected he remains at work in the trade. See also *Evans* v. *International Typographical Union*, *supra*, at 686-687."

The real thrust of the Board's argument, here and elsewhere, is that "... employees in an industrial plant cannot be expected and would not play the role of lawyer or judge ..." (Br. pp. 19, 35, 43). We believe employees will not resent this. Printers are quite as willing to leave to lawyers and judges questions of legality, as lawyers and judges are to leave to them the setting of type. They recognize their lack of specialized competence to decide these matters. The fact, with which we wholeheartedly agree, (Br. p. 34) that "it would be unlikely that an employee or foreman would go over the voluminous ITU laws, provision by provision, and attempt to determine what provisions were likely to be illegal and thus no longer operative," is an entirely deserved tribute to the levelheaded common sense of American workers. But it does not establish an unfair labor practice.

We submit that it would require no great forensic ability to convince foremen and employees that this clause does not contemplate discrimination in hire; there are certainly few, in this industry at least, who are not by now aware that the Taft-Hartley Act illegalized the closed shop. But we can make no such presentation to a hypothetical group, concealed from public view by the fog of suspicion and illiteracy which the Board has raised. The fact that the Board has been unable to demonstrate that any General Law has been illegally applied is good evidence that the ITU, and its attorneys, know how to "separate the wheat from the tares" (*Alpert* v. *ITU*, 161 F. Supp. 427, 431; Br., p. 43) *in practice*; we confess our inability to provide answers to all the suppositious cases which can be raised in a manner satisfactory to the Board.

There is criticism of the fact that the "ITU has never furnished its locals or members a specific list of which of the General Laws were in conflict with the Act and thus suspended" (Br., pp. 12, 17, 29, 34, 42). As we have repeatedly explained, none of them is in conflict with the Act, for all of them have a valid field of application in enterprises not affecting commerce and in Canada. Appendix B to Petitioners' Brief in No. 340 makes entirely clear the fate which would await any effort to do so. We readily concede that we have not kept members of the ITU informed (except as specific, practical questions arose) concerning the numerous changes in the Board's jurisdictional standards, its voluminous and in our view frequently distorted readings of the statute, or the status of Court decisions under the Act. The ITU is a trade union, not a labor law service. However, the ITU has continually and specifically made clear to its members that they may not make union membership a qualification for hire.[6]

Petitioner cites *Radio Officers* v. *NLRB*, 347 U.S. 17 (Br., p. 38) for the proposition that "the legal effect of the General Laws clause is thus the same as though the ITU and the publishers had specifically set out closed shop provisions in the contract" (*id.*,

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[6] In addition to the change in the Laws clause to add the provision "not in conflict with law" (R. 246) and the addition of Article XIV to the General Laws (R. 246-7), the ITU eliminated the provision in the oath of membership requiring members to give preference in employment to other members. (R. 234-36). Since the Board seeks to require unions to disclaim discrimination (*e.g.*, its order here and in *Local 357* v. *NLRB*, No. 64, this Term) its minimizing of these actions (Br. p. 32) is puzzling. Again, the ITU has repeatedly instructed its locals in particular situations whether a particular contract provision or practice would violate the Act, and has repeatedly and expressly said that discrimination on the basis of union membership is forbidden. (R. 250-51; R. No. 340, pp. 99, 389-94).

p. 39). But an agreement either provides that Union membership is a condition of hire, or it does not. The phrase "the legal effect . . . is thus the same" is merely one way of saying that language means something other than what it says, and we suggest that neither *Radio Officers* nor any other decision of this Court can support this result. The ITU has sought to sustain the validity of the agreements here in question because it believes them to be beneficial to it, to its members, and to the industry. It would be fatuous to assert that a purpose has not been to encourage membership in the ITU; union leaders would be derelict in their trust if they did not follow policies designed to encourage membership. *Radio Officers* makes it clear that this is not an objective proscribed by the statute (see 347 U.S. 17 at pages 42-43). Section 8(a)(3) still contains the words *"by discrimination."*

Its factual premises thus supply no support to the Board's decision. This contract does not require membership in the union and therefore is not a closed-shop contract.[7] The Board's effort to establish the contrary

[7] We suggest that its statement of the applicable legal principles is equally dubious. Its thesis (Br., p. 20) is that the mere execution of a closed shop agreement, without more, constitutes "discrimination" within the meaning of Section 8(a)(3). While there is language in some of the cases cited at p. 20, n. 71 of the Board's brief which supports this assertion, it has not been passed on by this Court. Section 8(a)(3) requires discrimination in any "term or condition of employment." The mere execution of an agreement, until some action is taken pursuant to it, does not "discriminate" in any term or condition of employment. The Board asserts (Br., p. 20) that such an agreement is bad because "It classifies employees into two groups—those who are union members and those who are not— . . .". But mere classification is not "discrimination" in an invidious sense. See *e.g. Caskey Baking Co.* v. *Virginia*, 313 U.S. 117, 121. Such an agreement is no more than a declaration of a present intention of the parties to discriminate at some time in the future, if the occasion arises.

(pp. 21-22) must, in view of its admission that there is nothing unlawful on the face of the contract, rest on the assertion that "whether a contract requires union membership as a condition of employment is not always apparent from the face of the contract" (Bd. Br. p. 21). *American Newspaper Publishers Association* v. *NLRB*, 193 F. 2d 782 (CA 7), cited as authority, certainly stands for no such perverse principle of contract interpretation, as is plain even from the Board's statement of the case. How does one ascertain the meaning of a contract except from what appears on its face? "There is no reason apparent why terms should be implied from some outside authority to take the place of legal terms collectively bargained" *NLRB* v. *Rockaway News Co.*, 345 U.S. 71, 78-79. This is again the Board's technique here. We once more advert to the necessity of some finding of "motive" to sustain a finding of discrimination. As Judge Learned Hand pointed out in *NLRB* v. *Business Machines and Office Appliance Conference Board*, (CA 2) 228 F. 2d 553, at 561 (concurring opinion)

> "As I understand it, the Court in that case [*Radio Officers*] did not say that the employer's motive was not crucial in deciding whether he had 'discouraged' joining the union; but it did say that a special finding as to his motive was not essential."

See also *Pittsburgh-Des Moines Steel Co.* v. *NLRB*, 284 F. 2d 74 (CA9). No such finding of motive was

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It may never arise, or the parties may change their minds. The Board thus seeks to inflate what is no more than one item of relevant evidence in determining whether there has been "discrimination," into a finding of a statutory violation. And we believe that this Court's opinion in *NLRB* v. *Drivers Local Union*, 362 U.S. 274, 281, forecloses any contention that such contractual language, without more, can be said to "restrain or coerce" within the meaning of Section 8(b)(1)(A). (See Brief for Petitioners, No. 340, p. 20, fn. 11).

here made, nor would there be any evidence to support one.

Petitioner complains that the incorporation of the General Laws not in conflict with law "tends to infringe the Section 7 rights of employees in those plants where the closed shop is illegal." (Br. p. 43). These Section 7 rights are not defined in its brief,[8] but if we understand the Board's position, it contends that employees are to be free of any encouragement to join or remain in a union which may result from their erroneous interpretation of a contract which is admittedly lawful on its face. (See Br. pp. 34-35). We submit that there is no Section 7 right to be free of subjective apprehension;[9] recognition of such a right would empower the Board to "sit in judgment upon"[10] every provision in any collective bargaining agreement, to determine (with no objective standards to guide or restrain it) what meaning the "contracting parties could reasonably expect that the employees would attribute" thereto (Br. p. 33-34). The attack on the ITU General Laws, (and on the exclusive hiring hall in #64, which is premised on the same fallacy) provides ample warning of the hazards to collective bargaining if the Board is allowed to expand Section

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[8] Although Br., p. 43 says that it has been "shown" that the use of the General Laws clause "tends to infringe Section 7 rights", no other reference to that Section is made in its Argument. (See Br., p. iv.)

[9] Query: How will the Board protect an employee, for example, in a Southern textile mill, where there is no collective bargaining agreement, and none of the other employees are members of a union, from the fear that he will be discriminated against if he exercises his right to join?

[10] Compare *NLRB* v. *Insurance Agents Union*, 361 U.S. 477, 497.

7 in this manner, and confirms the wisdom of Chief Judge Prettyman's holding that "assumptions that employees will not understand a lawful contract cannot be the basis for holding the contract illegal". *Honolulu Star-Bulletin, Ltd.* v. *NLRB*, 274 F. 2d 567, 570. Moreover, the Board entirely discounts the Section 7 right of all the employees to bargain through their representative, the union, about the subjects of the General Laws, such as seniority, apprenticeship, hire and discharge. That right, by contrast, is firmly established. *Teamsters Union* v. *Oliver*, 358 U.S. 283, 295; *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 236.

For these reasons, we submit that the Board has not shown the General Laws clause to be unlawful.

2. THE PRIORITY (SENIORITY) AND FOREMAN PROVISIONS OF THE AGREEMENT ARE LAWFUL.

While the Board asserts that the legality of the General Laws clause is the sole issue presently before the Court, we disagree with the statement (Br. p. 4, fn. 1) that

> "The conclusion of the court below that the contract was not vulnerable on these grounds [the footnoted issues] was so entwined with its holding on the principal question that a reversal of that holding would make appropriate remand to that court for reconsideration of the subsidiary questions."

The Court below carefully analyzed these contract provisions and the practices under them without reference to its holding with respect to the General Laws clause, and the Board is not on this ground entitled to a second bite at the apple before that Court. We therefore turn to the issues footnoted by the Board at page 4 of its Brief, and Page 2, n. 2, of its Petition for Certiorari.

(a) The priority (seniority) provisions of the agreement are lawful.

The Board found that the agreement here in question unlawfully delegated control of priority matters to the Union (R. 646-647, 660-62, 664, 705). The Court below held that "there is a fatal defect in the Board's minor premise; viz., that unrestricted hiring and seniority control was, under the contract, delegated to the union" (R. 829). That holding is not challenged here. We turn, therefore, to the Board's major premise, that it is unlawful for an employer to delegate to a union control over seniority matters. The authority for this thesis is *Matter of Pacific Intermountain Express Co.*, 107 NLRB 837, *enforced as modified, NLRB* v. *International Brotherhood, etc.*, 225 F. 2d 343 (CA 8), in which the Board overruled its prior holding in *Matter of Firestone Tire and Rubber Co.*, 93 NLRB 981. The *rationale* for the Board's reversal was there stated:

> "The objective standards relevant to a determination of seniority generally derive from the employment history of the employees involved, and that information is, as a rule, peculiarly within the knowledge of the employer. Indeed, the area in which the union is likely to be more informed than the employer with respect to the employer's employees is that pertaining to employees' union membership or to the employees' compliance with the union's constitution, bylaws, or other regulations—subjects, however, which obviously are not relevant considerations in the implementation of a seniority provision. *We can therefore see no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a*

> *nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union.* Accordingly, the inclusion of a bare provision, like that in the 1949 contract, that delegates complete control over seniority to a union is violative of the Act because it tends to encourage membership in the union. And because we believe that it will similarly tend to encourage membership in the union, we also conclude that, the inclusion of a statement, like that in the 1952 contract, that seniority will be determined without regard to union membership is not by itself enough to cure the vice of giving to the union complete control over the settlement of a controversy with respect to seniority." 107 NLRB 845-46 (emphasis supplied).

The factual premises on which this holding rests are plainly lacking here, as this record shows, and as the court below found (R. 826-828, 831). In this industry information concerning seniority is not "peculiarly within the knowledge of the employer". Employees seeking work, who meet the contractual requirements for employment, place their names on a priority list, or slipboard, which is available to all employees. "Priority works in a public fashion" (R. 254, and see 252-257), and hiring is done in strict priority order, from this list. Any unfairness is immediately apparent.

Further, this Court has held that the Act does not require that seniority be based solely on the relative employment history of those covered by an agreement: ***Ford Motor Co.*** **v.** ***Huffman,*** 345 U.S. 330, 338-339, 342; ***Aeronautical Lodge*** **v.** ***Campbell,*** 337 U.S. 521, 526-529. The standards for seniority determinations are peculi-

arly appropriate for collective bargaining between the parties, without the Board's paternal supervision. Dunlop and Healy, *Collective Bargaining*, pp. 229-231 (1953); Slichter, Healy and Livernash, *The Impact of Collective Bargaining*, pp. 115-135 (1960). As noted in the latter treatise (at page 116),

> "Up to this point the word seniority has been defined arbitrarily as an employee's length of continuous service with the company. This broad definition is reasonably accurate insofar as eligibility for benefit programs is concerned. It serves well in the application of benefit seniority. However, the definition may be entirely inadequate and misleading for those items involving the use of competitive status seniority to determine the order of lay-off, recall, promotion, and other preferential treatment. For these areas the definitions are almost too varied to enumerate".[11]

In general, seniority problems, as between employees of comparable competence and experience, are of little interest to management, but may be of vital interest to unions. Both therefore have a strong interest in permitting resolution of these matters by the Union.[12]

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[11] The same treatise notes at page 135: "It is generally agreed that the company should provide the union with a current seniority roster on a periodic basis. In addition, many unions have secured the weekly transmittal of all 'personnel transactions.' With these two lists in hand the union is able to check promotions, layoffs, recalls, transfers, and other transactions that might involve seniority rights."

[12] "With the development of a seniority clause, there come interpersonal and intergroup differences *within the union* and problems of individual and group inequities to be solved *by the union*. • • • In some unions seniority problems are dealt with by a special internal grievance committee that is empowered to act in all cases of dispute that do not directly involve management. The responsibility is still the union's; the union is still the final arbiter of the

The Board says this is unlawful because "it is to be presumed . . . that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union . . ." But, the "law will never presume that parties intend to violate its precepts" *Owings* v. *Hull*, 9 Pet. 607, 628. "A discriminatory purpose is not to be presumed" *Snowden* v. *Hughes*, 321 U.S. 1, 8; *Cincinnati N. O. & T. P. R. Co.* v. *Rankin*, 241 U.S. 319, 327; *Korbly* v. *Springfield Institution for Savings*, 245 U.S. 330, 336; *Bank of Kentucky* v. *Adams Express Co.*, 93 U.S. 174, 181; *Thornton* v. *Bank of Washington*, 3 Pet. 36, 42. Further, as is now its wont, the Board once more deletes the phrase "by discrimination" and finds a violation of the statute merely in a presumed *encouragement* of membership.

The Court below made explicit findings, not here attacked, that the priority provisions had operated in nondiscriminatory fashion. (R. 826-828) It is thus

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meaning of seniority.'" Sayles, *Seniority: An Internal Union Problem*, 30 Harv. Bus. Rev. 55, 56, 61 (1952) (emphasis in original).

"To a union struggling for complete recognition, control over lay-off policies is important both as an organizing issue and as a protection from discrimination against union members. In the determination of merit or competency, management has wide discretion over which a union can exert very little control. It is natural, therefore, that organized labor should attempt to limit management's control by forcing adherence to a clearcut and definite formula based on length of service." Harbison, *The Seniority Problem in Mass Production Industries, XXX Proceedings, American Economic Association*, pp. 223-225 (March, 1940).

". . . the equal division of work and the seniority rule are by far the most important methods employed by unions to control layoffs . . ." *Slichter, Union Policies and Industrial Management*, p. 137 (1941).

clear that the *Pacific Intermountain* presumption is conceived by the Board to be irrebuttable (See also 107 NLRB 845 at 846). But an irrebuttable presumption which has no rational basis and rests, like this, on mere suspicion, is invalid as a denial of due process. *McFarland* v. *American Sugar Ref. Co.*, 241 U.S. 79, 86; *Manley* v. *Georgia*, 279 U.S. 1; *Tot* v. *United States*, 319 U.S. 463. *Cf. Speiser* v. *Randall*, 357 U.S. 513, 523-24. The Board appraises this contract on the basis of "what other people intended by other contracts of a similar character," contrary to *Rountree* v. *Smith*, 108 U.S. 269, 276.

(b) The provisions of the agreement dealing with the duties and Union membership of foremen are lawful.

This issue has been fully briefed in *ITU* v. *NLRB*, No. 340, this Term, and we respectfully request that the argument there made (at pp. 34-37) be treated as our argument in this case. In our view, Judge Hincks' opinion conclusively disposes of this issue (R. 828-829).[13]

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[13] That the Court more accurately reflects industrial reality than the Board's opinion is shown by the following comments:

In Leiter, *The Foreman in Industrial Relations*, 57-60 (1948) it is pointed out in discussing foremen in the printing trades,

> "The unions invariably recognize that foremen are representatives of management. They are employed to direct the operations and supervise the men. The employer is in no way restricted in the hiring or firing of his foremen. The union has never considered the dismissal of a foreman as subject to the grievance procedure. This means that the foreman cannot depend on seniority and upon union protection for tenure of employment. He must continue to perform his duties in a manner satisfactory to the employer in order to keep his job; for the employer otherwise can replace him by another union member. Generally, the foreman is not answerable to the union for the carrying out of

(c) The Board's Mountain Pacific [14] doctrine has no application to this case, and is in any event erroneous.

We believe that the Board's treatment of this issue can properly be characterized as a deliberate and wilful effort to mislead the Court of Appeals, warranting

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any of his functions, but if the union objects to any of his actions, the matter is taken *up by the regular grievance machinery* . . . The foreman stands between the union and management. He is bound to the union in that he must retain his union card to assure himself of a job in the event he is demoted. For many foremen are demoted. Demotions are fewer in the large newspaper establishments where foremen are selected from among the assistant foremen and their qualities and aptitudes are known to higher management, than in other branches of the industry. During the war, turnover among foremen increased. . . . Only a handful of foremen think in terms of insurance benefits. They know the viewpoints of both employers and employees, and can interpret the position of one to the other. Although the union has control over the foreman, and requires him to retain his membership, yet it does almost nothing for him while he is a foreman. Though occasionally some locals set a foreman scale in the contract, most of the locals fix only a minimum wage for him, which is slightly above that of journeymen. The foreman, however, bargains individually with the employer for his wages. The foreman also takes part in the first step of the grievance machinery as the representative of the employer.'

And, in *How Collective Bargaining Works*, Twentieth Century Fund, (1942) at page 147, it is noted that it is,

"clearly recognized that (in the printing trades) the foreman's first responsibility is to management. His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man, is thoroughly acquainted with the union agreement and rules. He is in a good position, therefore, to interpret the union's position to management and vice versa."

[14] *Matter of Mountain-Pacific Chapter, etc.*, 119 NLRB 883 (1957), *enforcement denied, NLRB* v. *Associated General Contractors*, 270 F. 2d 425 (CA 9).

careful analysis by this Court in the exercise of its supervisory functions.

Prior to the filing of the briefs in the Court below, the Board filed with the Court of Appeals for the District of Columbia its brief in *Local 357, etc.* v. *NLRB*, 275 F. 2d 646 (CADC #14,794) now before this Court as Nos. 64 and 85. In that brief the Board set forth at length (at pp. 21-23) the physical and other characteristics of hiring halls as used in the maritime, building construction, trucking and other industries. It represented, without qualification, that

> "The Board's findings and supporting rationale [in *Mountain Pacific*] are limited to *exclusive* hiring hall agreements. They do not extend to *non-exclusive* hiring hall agreements (p. 11) . . . The Board's findings and the supporting rationale are limited to an exclusive hiring agreement. —Under a non-exclusive provision, the employer is free to hire without referral from the Union (p. 13) . . . This case, however, presents that very question, namely, whether and under what circumstances the parties may validly include in a contract the union's policy requiring all applicants for employment to be cleared through the union hiring hall (p. 18) . . . We repeat, therefore, that the Board's findings and supporting rationale are limited to exclusive hiring hall agreements (pp. 41-42) . . . Because the distinction between an exclusive hiring hall contract and a non-exclusive hiring hall contract is crucial (p. 42) . . ." (emphasis in original).[15]

[15] At p. 21 of the same brief it was said: "Essential to an understanding of the inference of inherent encouragement which is at the root of the Board's *Mountain Pacific* decision is an understanding of the character and history of exclusive hiring halls." It was stressed that "In most cases, the hiring hall is where the union holds its meeting and has its offices." (*id.*, p. 22). That

In this case, *there was no hiring hall, exclusive or non-exclusive.* As Judge Hincks noted, in findings not challenged here, (R. 830)

> "... the News, not unlike numerous other employers, merely placed its hiring powers in the hands of its principal employee, the foreman, *who discharged that responsibility on the employer's premises.*" (emphasis supplied)

Yet, having made these explicit representations concerning the limited reach of *Mountain Pacific* before the Court of Appeals for the District of Columbia, the Board relied on *Mountain Pacific* in reaching its decision here (R. 709), urged it before the Court below (R. 824, 829), and even here insists that the matter is still open in the event a remand is ordered (Br. p. 4). Even when every reasonable allowance is made for the possible failure of communication within an agency and for the zeal of counsel in presenting a case, the contrast between the representations made in *Local 357* and in this case is so glaring that we think it can only be described as an effort to mislead the Courts of Appeals. The alternative is to assume that the Board does not know the difference between a foreman and a hiring hall.

The Board's annual report for the fiscal year in which *Mountain Pacific* was decided discusses that case under the heading "exclusive hiring-hall agree-

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argument was jettisoned in the Board's brief in this Court, perhaps because the Local 357 hiring hall in that case was three miles from the union hall. In this case, as the Court below found (R. 830), the foreman hired "on the Employer's premises." Again, at p. 22 of that brief the Board said, "In most cases he [the dispatcher] and other hiring hall personnel are selected, paid and controlled by the union." Here, as the Court below found, the foreman is selected, paid and controlled by the employer. (R. 828-29; see G.C. Ex. §§ 4, 20, R. 528, 532-34).

ments," and analyzes the case in those terms. *Twenty-third Ann. Bd. R.*, pp. 85-86 (1958).[16] Congress has so understood the doctrine. See Board brief in *Local 357*, p. 44, n. 23. In these circumstances, the Board's paean to its own administrative expertise (Bd. Br., No. 64, pp. 25-34) has a hollow ring. "The administrative process will best be vindicated by clarity in its exercise" *Phelps Dodge* v. *NLRB*, 313 U.S. 177, 197.[17]

There is no need here to reargue *Local 357*. Yet it is apparent from this case that if this Court sustains the Board in its *Mountain Pacific* decision, the Board is prepared to go the whole way of declaring illegal any Union participation in the hiring process, no matter

[16] See also Petition for cert. in *NLRB* v. *Hod Carriers, etc.* (No. 75, this Term), p. 13; Brief for Respondent in *Local 60, Carpenters* v. *NLRB* (No. 68, this Term) p. 26, n. 19, 20; p. 28, n. 24.

[17] The cases cited by the Board do not support its assertion of power to create a general "rule of law the applicability of which to a given hiring agreement is not affected by extrinsic evidence." Pet. for cert. in *NLRB* v. *E & B Brewing Company*, #211, this Term, p. 12, characterizing the *Mountain Pacific* doctrine. The promulgation of rules of universal application hardly comports with "the work of applying the Act's general prohibitory language in the light of the infinite combination of events . . ." *Republic Aviation Corp.* v. *NLRB*, 324 U.S. 793, 798 (Bd. Br. No. 64, p. 26). *Republic* was the first of several cases here involving no-solicitation rules; these show that this Court has eschewed "mechanical answers." *NLRB* v. *Steelworkers*, 357 U.S. 357, 364. Although "the Board's special understanding of these industrial situations" *Id.* at 363, was recognized, it was required to "appraise carefully the interests of both sides of any labor-management controversy in the diverse circumstances of particular cases." *Id.* at 362-63. And where the Board failed to take into consideration a relevant factor it was reversed. *NLRB* v. *Babcock & Wilcox*, 351 U.S. 105; *NLRB* v. *Avondale Mills*, 357 U.S. 357.

Clearly, "recognition of the appropriate sphere of administrative power here cannot exclude all judicial review of the Board's actions." *NLRB* v. *Insurance Agents*, 361 U.S. 477, 499.

to what degree, or by what methods, and irrespective of any safeguards that may be provided. The effort is to squeeze unions out of the area of control over hire—the "dam to self-organization at the source of supply" *Phelps Dodge Corporation* v. *NLRB*, 313 U.S. 177, 185, and see the history of this problem at pp. 182-187. The Board is again indulging its propensity to "sit in judgment upon the substantive terms of collective bargaining agreements". *NLRB* v. *American National Insurance Co.*, 343 U.S. 395, 404. The Board's specific object is to read into the statute its preconceptions of the proper distribution of authority between management and unions. This is clear from its use of the "delegation" concept in *Pacific Intermountain Express* and its rhetoric in *Mountain Pacific*, for example: "complete and outright surrender of the normal management hiring prerogative to a union" 119 NLRB at 894; "The employers here have surrendered all hiring authority to the union". *id.* at 896. But "the extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bargaining." *NLRB* v. *American National Insurance Co.*, 343 U.S. 395, 409. Indeed, if the lesson of that case had taken hold, the question of the legality of the ITU Laws clause would never have arisen, for that clause is simply a form of the management functions clause which was upheld there. The management functions clause leaves to the employer the unilateral decision of all questions not decided by the contract. The Laws clause states that all questions not decided under the contract will be disposed of according to the union Laws, but only those Laws which may be lawfully applied in the particular circumstances.

The Board attempts to justify its *Mountain Pacific* doctrine by a reliance on "experience with hiring halls

as they have traditionally operated" (Brief, No. 64, p. 37). The accuracy of this may be doubted. No such experience was cited in its opinion. The first such effort appeared in its brief in the Court of Appeals for the District of Columbia in *Local 357* v. *NLRB*, where a list of such cases was set forth as Appendix A. That list differs substantially from that appended to the Board's brief in this Court (Brief, No. 64, pp. 63-66). The technique assumes that a mailer in a New York newsroom is familiar with the "nuances" of the working rules of Carpenters' Local No. 1028 in Ardmore, Oklahoma, *Matter of Carpenters Local 1028*, 111 NLRB 1025, *enforced*, 232 F. 2d 454 (CA 10), which appears as Case No. 43, Board Brief, No. 64, p. 46, and that he will be "restrained and coerced" by the operations of a Boilermaker hiring hall in San Francisco, *Matter of Boilermakers Local No. 6*, 94 NLRB 1590, which is Case No. 3 on the same list (Bd. Br. #64, p. 43). The Board has recently been admonished[18] that "Freudian theory is not yet an adequate substitute for the required evidence of intent"; the Board's postulate here is akin to the Jungian theory of the "collective unconscious".

3. THE BOARD'S ORDER IS INVALID.

Sections II(a)(3) and II(a)(4) of the Board's Order would broadly enjoin *all* types of violations of Sections 8(b)(1)(A) and 8(b)(2) of the Act, with reference to *all* newspaper publishers in New York City (R. 716-717). Section II(a)(1) would invalidate the Union's agreements with all these publishers (*id.*). Sections II(a)(2), II(b)(1) and II(b)(2) would require the union to *specify* which of its General Laws are lawful and which are unlawful (*id.*).

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[18] *Pittsburgh-Des Moines Steel Co.* v. *NLRB*, 284 F. 2d 74, 87 (CA 9).

Since the findings of the Court below are not here attacked, the Board therefore proposes such an Order on the basis of the denial to one casual extra of one night's work (R. 835). The priority system operates only among regular employees and does not affect such casual employees (R. 831); the Board nonetheless would hold it unlawful. Discrimination was charged at two newspapers, and sustained as to one; the Board would extend its Order to all publishers. The Board does not show, and there is not, any nexus between the unfair labor practice sustained by the Court and the agreement in question. It has not shown that these agreements "were a consequence of the unfair labor practice found . . . or that they themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease and desist the specified practices any more effective." *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 236. *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 435; *Communications Workers* v. *NLRB*, 362 U.S. 479.

With reference to the "specificity" issue, we are told that this is a matter for the "ingenuity of counsel" (R. 681). Despite the request of the General Counsel (R. 701) and the respondents that the Board make this specification, it did not do so, and the statement in the Board's Brief (p. 12) that

> "The Board's Order requires the News to specify in its current contract with the union that the provisions of the ITU General Laws *found illegal by the Board* are not incorporated in the contract" (emphasis supplied)

is untrue, for the Board made no such findings. Nor was there any testimony that this task is "difficult" (Br. p. 42); it was that it is impossible (R. 251). The reluctance of the Board to concede, even *sub silentio*,

that some of the General Laws may be valid is no adequate excuse for thrusting this task on the "ingenuity of counsel". *Swift & Co.* v. *United States,* 196 U.S. 375, 396; *Connally* v. *General Construction Co.,* 269 U.S. 385, 393; *J. I. Case Co.* v. *NLRB,* 321 U.S. 332, 341; *Hartford-Empire Co.* v. *United States,* 323 U.S. 386, 409. *Cf. Scull* v. *Virginia,* 359 U.S. 344. Specificity of court orders is "basic to correct judicial administration". *English* v. *Cunningham,* 269 F. 2d 517 (CADC). The proposed order is, indeed, a form of entrapment, for our previous experience with this issue is sufficient to apprise us that, no matter how the task is done, the Board will be waiting to pounce on the result. The Board's Order thus would place the ITU's "business under the jeopardy of contempt for violating a general injunction." *New York, N. H. & H. R. R. Co.,* v. *ICC,* 200 U.S. 361, 404, approved in *NLRB* v. *Express Publishing Co.,* 312 U.S. at 435. It is the Board's, not the respondents', duty to "separate the licit from the illicit" (Br. p. 44).

It will be noted that the Board orders the respondent News to specify which of the General Laws are lawful and which unlawful. This is unconscionable. As we have shown, (Brief #340, pp. 12-13) the General Laws represent the fruits of a century of struggle for better working conditions. The Board now proposes that employers are to be given a license, under the compulsions of a decree, unilaterally to set aside such of them as they wish. If the legality of a General Law is challenged, the ITU has the right to be apprised of that fact, to justify it, and to judicial review of an adverse finding. The Act has not granted the Board a power of attorney to execute an assignment of the legal rights of the ITU to employers. *Consolidated Edison Co.* v. *NLRB,* 305 U.S. 197, 236, 238.

The brief of respondent News Syndicate expresses the understandable indignation of an employer at the Board's attempted application of the dues reimbursement remedy to the agreement here in question. On behalf of the union we too object, although it is our members who will obtain the windfall. There is, in this record, not a scintilla of evidence to show "restraint or coercion," either by the employer or the Union in the application of their agreement, and only by the wildest stretching can the Board assert that employees are restrained and coerced to pay dues by an agreement admittedly lawful on its face, which contains no provision dealing with the payment of dues, and which has been administered on a non-discriminatory basis.

A number of problems would be solved if employers, through court decrees, could be compelled to pay the dues and assessments of ITU members. It would eliminate a recurring source of controversy within the Union as to what their level should be, and the ITU could measurably broaden the scope of its activities if employers, rather than members, were required to bear the cost. The Board's order has the additional advantage that the ITU could unilaterally determine the amount of the employer's contribution. But, despite its obvious attractions, and contrary to the immediate financial interest of certain of our members, we feel compelled to reject this proposed fringe benefit as utterly degrading. It rests on the false—even insulting—premise that trade union members are not free citizens, voluntarily exercising their right to associate for lawful purposes, and willing to bear the necessary costs, but craven serfs meekly paying dues only under an asserted "restraint and coercion" by employers and union officials. The ITU was not founded on, and has

not survived over a century on, any such deformed judgment.

In short, the imposition of the remedy is of a piece with the Board's position on the merits: It makes of collective bargaining an ultra-hazardous activity, with absolute and heavy liability imposed on employers and unions if, in drafting their agreements, they fail to divine precisely the Board's intuition of their "foreseeable impact on employees."

CONCLUSION

For the reasons herein set forth, we urge that the judgment of the Court of Appeals for the Second Circuit be affirmed.

Respectfully submitted,

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February, 1961



SUPREME COURT OF THE UNITED STATES

No. 339.—October Term, 1960.

National Labor Relations Board, Petitioner, v. News Syndicate Company, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 17, 1961.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondent union, affiliated with the International Typographical Union, entered into collective bargaining agreements with various publishers including respondent News Syndicate (and Dow Jones & Co.) which contained a provision that "the General Laws of the International Typographical Union . . . not in conflict with this contract or with federal or state law shall govern relations between the parties on conditions not specifically enumerated herein." The contract limited mail-room employment to "journeymen and apprentices." The contract also provided that mail-room superintendents, foremen, and assistant foremen must be members of the union and that the foremen would do the hiring. The General Laws of ITU provided that "foremen or journeymen" should be "active members" of the union, that only union members should operate, maintain, and service any mailing machinery or equipment, that no person should be eligible as a "learner" who is not a union member.

Another provision of the contract stated, however, that "The union shall not discipline the foreman for carrying out the instructions of the publisher or his representative in accordance with this agreement." It also provided that

the foremen "shall be appointed and may be removed by the Publishers."

The foreman at one plant was a union member and the Board found that he discriminated in favor of union men against a nonunion employee named Julius Arrigale. It also found that the foreman at another plant was a union member and discriminated in favor of union men and against a nonunion employee named Burton Randall. It concluded that the union and the News Syndicate had violated § 8 (b)(1)(A) and (2) and § 8 (a)(1) and (3) of the National Labor Relations Act, as amended by the Taft-Hartley Act, 61 Stat. 136, 141, as amended, 29 U. S. C. § 158, respectively by their contract arrangements and by operating an unlawful closed shop and preferential hiring system.[1] It held that vesting control over

[1] Section 8 provides in relevant part:

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . .

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the

employment in union foremen was a delegation of exclusive control over hiring to the union without the requisite safeguards prescribed by the Board in *Mountain Pacific Chapter*, 119 N. L. R. B. 883. The order of the Board contained various provisions including a direction that all employees in the mail-rooms be reimbursed for dues and assessments paid the union for a period beginning six months before the service of the charges against it; and this duty was made, so far as concerns the news mail-room, a joint and several liability of the union and News Syndicate. 122 N. L. R. B. 818.

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periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership . . . ."

Section 7 provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a)(3)."

The Board petitioned the Court of Appeals for enforcement of the order. That court held that the finding of discrimination against Randall was in part supported by the record; and it refused enforcement of the Board's order, allowing the Board if it wished, to enter an order directed only to that instance of discrimination the Court of Appeals found the record to show. 279 F. 2d 323. The case is here on petition for a writ of certiorari which we granted along with No. 340—*International Typographical Union* v. *Labor Board*, *post*, p. —, because of the conflict between them. 364 U. S. 877, 878.

What we have this day decided in *Carpenters Local 60* v. *Labor Board*, *ante*, p. —, is dispositive of the provision in the Board's order requiring respondents to reimburse union members for dues and assessments.

We also believe the Court of Appeals was right in concluding that the contract on its face is not unlawful even though the foremen—who are union members—do the hiring. In the first place, the contract (unlike the General Laws) does not require journeymen and apprentices to be union members. In the second place, the provisions of the contract which we have set forth make the foremen "*solely* the employers' agents," as the Court of Appeals concluded.[2] 279 F. 2d, at 330. Finally, as we

[2] The 1947 amendments to the Act changed the ruling in *Packard Motor Car Co.* v. *Labor Board*, 330 U. S. 485 which held that foremen were "employees." Section 2 (3) now excludes from the term "employees" one who is "employed as a supervisor." Section 2 (11) defines a "supervisor" as one "having authority, in the interest of the employer, to hire," etc., employees. Section 14 (a) provides:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

As stated by Senator Taft, under these provisions even a union

said in *Teamsters Local 357* v. *Labor Board*, decided this day, *ante*, p. —, we will not assume that unions and employers will violate the federal law, favoring discrimination in favor of union members against the clear command of this Act of Congress. As stated by the Court of Appeals, "In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives." 279 F. 2d, at 330.

We also agree with the Court of Appeals that the General Laws provision of the contract is not *per se* unlawful. For it has in it the condition that only those General Laws of the union are incorporated which are "not in conflict with this contract or with federal or state law." Any rule or regulation of the union which permitted or required discrimination in favor of union employees would, therefore, be excluded from incorporation in the contract since it would be at war with the Act. We can say with Judge Prettyman in *Honolulu Star Bulletin* v. *Labor Board*, 274 F. 2d 567, 570, that while the words "not in conflict with federal . . . law" might in some circumstances be puzzling or uncertain as to meaning, "there could hardly be any uncertainty respecting a closed-shop clause." For the command of § 8 is clear and explicit and the only exception is plainly spelled out in the provisos to § 8 (a)(3).

Whether in practice respondents maintained and enforced closed-shop and preferential hiring conditions raises a distinct question.

The Board's case comes down to the method by which those in the mail room became journeymen. One could either take an apprentice training program or pass a

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of foremen could be recognized by an employer, though no employer could be compelled to do so. S. Rep. No. 105, 80th Cong., 1st Sess., p. 5.

competency examination. Apprentices were hired by the foremen; but the Court of Appeals found that there were no discriminatory practices in the actual hiring of apprentices. If a person followed the examination route, the contract provided for it to be given "by impartial examiners qualified to judge journeyman competence selected by the parties hereto." The examiners were union officials and the mail-room foremen.

The union proposed and News Syndicate agreed in 1956 to put into the class of a "regular substitute" those extras who in the prior two years had earned 15 vacation credits, which was another way of describing those who had averaged about three days' work a week. Those who were hired on a day-to-day basis ("shaped for work") included 60 nonunion men. Of these, 31 were invited to take the examination. They passed, were made "regular substitutes," and subsequently became union members. Thereafter each of the new "regular substitutes" was hired prior to Randall, though he had "shaped" at the News longer than many of them. Randall, it appears, had full-time outside jobs that kept him from "shaping" regularly.[3] Arrigale was a nonjourneyman

[3] Burton Randall is neither a union member, nor a journeyman within the meaning of the contract between the union and the News. The hiring practices at the News are as follows: The minimum mailing-room staff ("regular situation holders") are both union members and journeymen; they report for work each night and are not required to "shape." To fill in vacancies and to meet added needs, the foreman next turns to "regular substitutes," who are both journeymen and union members. Next in line of priority are those the Board insists are referred to as "outside card men," but who are at any rate both journeymen and union members regularly shaping up for other newspapers, but available for work on the News. The lowest priority category consists of what the Board calls "nonunion shapers" (and the union, "non-journeymen casuals"); at any rate, these men have neither union membership or journeymen status. Within the category, such men are ranked in seniority rank running

who shaped up for the Wall Street Journal, which had essentially the same hiring setup as the News. The asserted discrimination occurred when "outside card-men" were hired in preference to Arrigale, although Arrigale was "shaping" steadily and was the oldest nonunion extra. The foreman testified he took "outside card-men" because he could be sure of their competency, because they would have taken the journeyman test or served as apprentices. There was no evidence that membership in the union was a condition for the journeyman test, save that all journeymen in fact did become union men.

Respondents, therefore, contend that to accord priority in the hire of extras to men who work regularly for the employer (and who also have the journeyman status) is a hiring system based on competency and legitimate employee qualifications.

The Court of Appeals concluded:

> "We find . . . a dearth of evidence either that a Union journeyman has ever been hired in preference (let alone, an unlawful preference) to a nonunion journeyman, or that the qualifying standards for taking a competency examination are discriminatory. The record is barren of even the slightest hint that there has been discrimination in the conduct of the examinations. Availability, dependability and regularity of service, as well as mere competency, are valid nondiscriminatory considerations in determining the order of hire. The fact that one applicant is as competent as another, does not mean that the other may not properly be preferred

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from the date of first shaping up for the News. Burton Randall is a "nonunion shaper" or "non-journeyman casual." He has been turning up for the "shaping" at the News for a good many years; for most of them, he showed only on Fridays and Saturdays since he held another job. From 1950 to 1956, he was third in seniority on the "casual's list"; from 1956, he was first on that list.

on the basis of his other qualifications. And the fact that those achieving status as new 'regular substitutes' subsequently became Union members and even indicated their willingness to do so prior to the adoption of the standard, does not indicate, at least on this record, that the standard, seemingly fair, was discriminatory in its effect. Randall admitted that he would have welcomed the opportunity to become a Union member, and for aught that appears in the record, so would the remaining extras who did not meet the established standard.

"We conclude that the record does not warrant a finding that the hiring system in general, or the competency system in particular, by its discrimination against nonunion applicants, encouraged Union membership." 279 F. 2d, at pp. 333–334.

This finding of the Court of Appeals disposed of Arrigale's complaint and all of Randall's with the exception of the loss of one night's employment as to which the court sustained the Board. The Board drew contrary inferences. But it does not now seriously challenge the foregoing finding of the Court of Appeals. Rather, its main reliance is on the long history of ITU's use of the closed shop, the fact that foremen were union members, and the obscurity of the "not in conflict" clause of the agreement. We think the reversal of the Board on the facts by the Court of Appeals was within the scope of review entrusted to it. See *Universal Camera Corp.* v. *Labor Board*, 340 U. S. 474, 490–491.

Affirmed.

MR. JUSTICE WHITTAKER dissents. See his dissenting opinion in *Carpenters Local 60* v. *Labor Board*, decided this day, *post*, p. —.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 339.—October Term, 1960.

National Labor Relations Board, Petitioner, v. News Syndicate Company, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April 17, 1961.]

Mr. Justice Harlan, whom Mr. Justice Stewart joins, concurring.

I join the Court's opinion on the basis of the reasoning set forth in my concurring opinions in No. 68 and in Nos. 64 and 85.

Here, as with respect to the "hiring hall" clause in Nos. 64 and 85, I think the Board's finding that the "General Laws" clause "encouraged" union membership must be accepted. I need only add that in light of the historic use of such clauses to maintain closed-shop conditions, I would not be willing to overrule the Board's determination that those employed or seeking employment in this newspaper's mail room would regard the innocently worded incorporation of the union's valid "General Laws" as in fact evidencing the employer's and union's intent to allow forbidden union bylaws to govern their relationship as regards employment, until a finding of an unfair labor practice arising therefrom had actually been made.

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Mr. Justice Clark, dissenting.

I agree with the Court's disposition of that part of the Board's order requiring respondents to reimburse union members for dues and assessments. However, for the reasons stated in my dissent in Nos. 64 and 85, I believe that the inclusion in the agreement of the "General Laws" and "Foreman" clauses violated § 8 (b)(1)(A) and (2) and § 8 (a)(1) and (3). I, therefore, dissent from those portions of the Court's opinion.